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Agriculture Committee
September 24, 2009

[LR103 LR104 LR240]

The Committee on Agriculture met at 9:30 a.m. on Thursday, September 24, 2009, at Central Nebraska Public Power and Irrigation District, 415 Lincoln Street, Holdrege, Nebraska, for the purpose of conducting a public hearing on LR240, LR103, and LR104. Senators present: Tom Carlson, Chairperson; Annette Dubas, Vice Chairperson; Merton "Cap" Dierks; Ken Schilz; Scott Price; and Norman Wallman. Senators absent: Russ Karpisek and Brenda Council. [LR240]

SENATOR CARLSON: Welcome to the September 24 Ag Committee interim hearings. I'm Tom Carlson, Chair of the Ag Committee. And to my left is Rick Leonard, our research analyst for the Ag Committee, and over here is Barb DeRiese, our committee clerk. Senators that are on the committee, to my right here, Senator Norm Wallman from Cortland; Senator Cap Dierks from Ewing; and to my left, Senator Scott Price from Bellevue and Senator Ken Schilz from Ogallala. Senator Brenda Council and Russ Karpisek were not able as committee members to be with us today but we've got other distinguished senators as part of the group and we're glad that they came and are going to be active in our discussion. Senator Tom Hansen from North Platte; Senator LeRoy Loudon from Ellsworth; Senator John Wightman from Lexington; and Senator Christensen, I'll introduce him in a minute or so here. And then we did have former Senator Schrock. I thought he was going to be in the audience. []

_____ : He had to go to a funeral. []

SENATOR CARLSON: Oh, he did. Okay, all right. Well, welcome to each one of you. Before we begin please turn off your cell phone and pagers. And those wishing to testify on a bill should come to the table where Senator Christensen is to be heard and those of you that want to be next in line, I think on this first one, we're not really going to divide up in terms of whose against it and whose for it, but you can testify just as you feel led to do so. If you do not choose to testify but you'd like your name entered in the official

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record as being present at the hearing, there's a form by the door that you can sign. There are the green forms that you need to fill out when you do testify and put those in the box on the table as you come forward. Also, if you do not choose to testify, you may submit comments in writing and have them read into the official record. However, you will not be listed on the committee statement unless you come to the microphone and actually testify, even if you just state your name and your position. We're using a computerized transcription program and it's very important to complete the sign-in sheets for testifiers prior to testifying. So we ask you to do that before you begin speaking, and have those ready as you come forward. If you're testifying on more than one bill you need to fill one out for each one of the bills. When you come to testify, give the...either give the forms to Barb or put it in the box there and don't turn it in before you actually testify. And please write so that she can read it. As you begin your testimony, state your name and spell it for the record even if it's an easy name because that makes it clear who is testifying on the transcript. If you have handout material, give it to Barb and she will see that it gets distributed. And I don't think we're going to have a problem here, but we don't need any display of support or opposition to somebody else's testimony. So we'd ask that you proceed that way. Our first one is LR240. Senator Christensen, a study to examine ideas for encouraging livestock development through participation and partnerships between communities, counties, organizations, and state agencies, so, Senator Christensen. [LR240]

MARK CHRISTENSEN: Thank you. Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. LR240 is a bill that is a study that I asked to support a bill that I'd introduced earlier encouraging to allow counties to precertify areas that could have livestock development that's determined locally by the local decision process, that once these areas are determined that has had a local hearing and ready to go, could be certified then and then opens up the opportunity for the state to be able to advertise for livestock. I'll give an example. My district up there at Farnam, they had a meeting like this up there and discussed what would the people up there be willing to accept. Through discussions of the community they decided they would like to have up to a 1,500 head dairy. So once

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that's determined then if you go out and certify a chunk of land where this could be built, if it's purchased, you actually can advertise that to the state. The state Ag Department knows if a group is looking to build a 1,500 head dairy or less, that they have a chunk of property that could be purchased and ready to go. So for, the idea of this, I believe, it provides an ease of ability for economic development anywhere in the state but especially western Nebraska that has lots of open areas. And what it does, it speeds up the process. Right now, a producer has to come in and put an option on a piece of property, have the local hearings, have the hearing process, see if they can get a permit to build there, and then start the building process working with DEQ and all these things after they get through the local meetings. If you can speed up the process by having the local meeting and have the areas precertified by the local people and have the neighbors approval and everything ready to move, then you could actually advertise that chunk of ground. That would allow us to more be able to compete with like what South Dakota does. Right now there's a number of people look at the state of Nebraska and they just head to South Dakota because they have precertified areas. They have areas that are available to build on. And that's why I believe this would be a great advantage for Nebraska. If you look at the ag industry or actually look at animal livestock, it's our number one industry in the state. But right now, we don't have any tool out there that really encourages it and makes it easier for locals or someone that would like to move in to step up and get the building process going quicker. So I think since this is a local driven process that exemplifies the American way of doing business. And that would allow the state, again, to advertise it, develop our number one industry. I think there's great opportunities right now to draw more livestock development into this state because of water issues and problems in other states, environmental issues, and things that other states have, that we could actually draw additional economic development up here in to our state and help the state to devise or economic development bring more jobs in western Nebraska. I'll be anxious to listen to people but as I think about this bill, because what this bill does is...what...that I had introduced, would allow counties to borrow interest free out of a revolving loan fund to do road improvements, tube extensions, turning lanes. Maybe it's graveling, widening, anything that they may do.

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And the purpose of that was that would be an incentive for the counties to want to step up and precertify an area for development. And the issue with the county comes in. Most of them have very tight budgets but if somebody wants to come in and build a livestock facility, it's generally not in well traveled roads because they look for low public areas. Areas not a lot of people live. So in doing that, the county is stepping up and they're having to widen the road, they have to gravel the road with their tight budgets, sometimes they'll have to spread it across two or three years getting everything done or ask the person building the facility to do it where if they could draw out of a noninterest loan for five years they could do it because the income comes to the county but it's delayed. The first year they do the expense and second year finally the building is done or at the end of the first year, in which, then the evaluation increases. At that point in time the county has increased revenue coming in that will help them pay off that loan. And that's why I thought a revolving loan process for the counties would be a great tool to encourage them to designate areas, that speeds up the whole process. And as I looked at it, and that's what I'm anxious to listen to people visiting about is, I didn't see negatives to the bill. If it's a local driven process, local decisions to have a pot of money there for county to have as a no interest loan, I couldn't see any negatives. So that's what I'm anxious to have people ask. Thank you. [LR240]

SENATOR CARLSON: Okay. Thank you, Senator Christensen. Any questions? Senator Louden. [LR240]

SENATOR LOUDEN: Yeah, thank you, Senator Carlson. Senator Christensen, when you talk about a revolving loan, where are you going to get the money to start the revolving loan from? [LR240]

MARK CHRISTENSEN: Well a year ago I had quite a little money found. I don't know if any of it's there anymore, but the Water Task Force died and there was going to be excess funds. That was one of them I had talked to. There was some leftover money out of the...I'm blank. [LR240]

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SENATOR SCHILZ: The Value Added Ag. [LR240]

MARK CHRISTENSEN: The Value Added Ag that hadn't been used and I'd asked to take that. And then there was one more place. There was three different places I had found some excess money that could have been moved into this fund a year ago. Whether that's there another year I can't answer. But I actually wasn't taking any money out of the General Funds. I was finding money left over in like Water Task Force being a done committee at the end of the year. I was getting that put in. The Value Added had some left over. I was asking to get that, and so I had money found in about three different places getting up to about a half million to get this started which would have been a great incentive. And then the bill just limited, you could take up to, apply for up to half of anything that was in the account at any point in time and it would be just a self-revolving deal. [LR240]

SENATOR LOUDEN: Thank you. [LR240]

SENATOR CARLSON: Okay. Any other questions? Senator Wightman. [LR240]

SENATOR WIGHTMAN: Thank you, Senator Carlson. Senator Christensen, this precertification process, and I don't remember reading the bill but...that you had proposed a year ago, but I assume the precertification process would be almost the same as if you had an applicant wanting to build out there and so it would be the same. They'd have to have proper zoning before they would precertify that and zone it. Or would they zone it with the zoning come after somebody decided that they would buy that track of land? [LR240]

MARK CHRISTENSEN: Well, I guess the way I seen it, basically you're...the county would be saying, we will zone this for livestock. Have that done so when the process is over, they can come in and start to...if they get it bought, they can start their permitting

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and start their building processes that normally have to be done. But it would speed up the process maybe a month or more because typically once you buy it, then you apply for their zoning request and then the advertising and the meetings and it can drag into several months even, and that discourages the economic development. Basically, you had rezoning but like I said, you could write it it's precertified, it can be built there with last zoning permit. Once you know who it is, you can make sure it's not a bad character but we have other processes that take care of bad characters. [LR240]

SENATOR WIGHTMAN: Well it would take the uncertainty out of it for an applicant that came in and wanted to buy and perhaps took an option on a track of land because he wouldn't know he was going to get the zoning. [LR240]

MARK CHRISTENSEN: Correct. It would allow the process to buy and start working with DEQ and your builder and your engineer and getting things done that way. [LR240]

SENATOR WIGHTMAN: Now that tract of land went on for several years, wasn't sold, it would still retain that zoning which might inhibit housing down the road in that particular area. I assume that zoning would last until the county board took further steps to change the zoning on it. [LR240]

MARK CHRISTENSEN: Changed it, yeah. Correct. [LR240]

SENATOR WIGHTMAN: Thank you. [LR240]

SENATOR CARLSON: Senator Price. [LR240]

SENATOR PRICE: Thank you, Senator Carlson. Senator Christensen, what comes to mind for me in seeing this, if we're going to put dollars, any dollars going to road projects, those are very expensive, we're going out on a whim and a prayer to build it and they will come type principle, you know, here. So the question, what's the break

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even point for a cattle producer to come out that you're going to have to open, widen roads and do this. Are you talking about fifty...you know, with the average size of herd being around 35 for statewide, are we talking you have to at least have 3,000 head before you're break even point is met? And then the other thing as Senator Wightman was saying there, you put in all this infrastructure money, you widen roads, and I agree with economic development, but no one comes. So the idea is, you'd have to wait until someone...you'd have to kind of have to have someone make an application or making rumblings and a commitment that they were going to come in there before you do it. Because there's a chicken and egg problem here. [LR240]

MARK CHRISTENSEN: No, the money is not...wasn't available and the loan until they purchased the land. So until an investor come in and purchased it and started permitting, the loan wasn't available for the county to do the... [LR240]

SENATOR PRICE: So, we already have...then you're saying you already have a commitment from somebody to follow through on this. [LR240]

MARK CHRISTENSEN: Before the money is spent. [LR240]

SENATOR PRICE: But how does qualifying the county ahead of time could speed that up then. That's why (inaudible) if we don't have a developer coming in yet. [LR240]

MARK CHRISTENSEN: Okay. If we don't know we got development coming, right now nobody does anything until somebody buys the land. Then they apply for the rezoning and they go through the public hearing process and this can take 30 days, 90 days, and longer depending upon how it's contested and things this way. So if you get all this done ahead of time and get the zoning done, you're ready, if somebody buys the land, then the county qualifies for the money as they're starting to do the building. [LR240]

SENATOR PRICE: So then, let me back and make sure I have it crystal then. We're not

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talking about widening roads at this point in time. [LR240]

MARK CHRISTENSEN: No. [LR240]

SENATOR PRICE: We're not talking about anything other than a paperwork chase. So, I mean, that doesn't come through in the testimony here and in the conversation. All this bill would be about is getting some...the only precertification action going on is zoning. [L4240]

MARK CHRISTENSEN: Correct. [LR240]

SENATOR PRICE: And they can't zone now? [LR240]

MARK CHRISTENSEN: They could but idea of giving them the revolving loan fund would be the incentive for them to step... [LR240]

SENATOR PRICE: But there would be no money coming in yet because all we're talking about here is the zoning. The money would only come in after somebody made a purchase of land. [LR240]

MARK CHRISTENSEN: Correct. But they have to precertify an area before they qualify to be able to use that loan fund. So if somebody wanted to do it in the old process, buy a chunk of land, get it rezoned and go, they could do it that way. [LR240]

SENATOR PRICE: But they wouldn't be eligible for... [LR240]

MARK CHRISTENSEN: They wouldn't be eligible for that revolving loan fund. The idea was to be able to get areas in the state that we could advertise to bring in or encourage locals to develop or bring somebody in from the outside the state. My example of Farnam was, they were willing to allow up to a 1,500 head dairy come in. Once you

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know that and you have an area located you can advertise to dairy saying, hey, we have ground available for you to purchase that is zoned for 1,500 head dairy. You may start the permitting process and going forward to build as soon as you purchase the property. It would be an economic development tool for the state of Nebraska if they had areas...we could say, hey, we could build a feedlot here, we could build dairy here. It might be pork or turkey or chickens. Whatever you have...the locals decide they want and they could choose multiple sites in the county or just one site. But once that's rezoned or percertified, then if someone comes in, the county qualifies for that revolving loan fund which helps them get through their budget constraints if somebody comes in to build. That's the advantage of having areas, is you can advertise it, you can tell, hey, we got lands available. [LR240]

SENATOR PRICE: All right. Thank you. [LR240]

SENATOR CARLSON: Okay. Any other questions? Senator Schilz. [LR240]

SENATOR SCHILZ: Thanks, Senator Carlson. Senator Christensen, thanks for coming in today. I guess back on the funding issue. I don't know...I don't think it's any...obviously it's no secret, I prioritized this bill, so. The funding sources too as well. We made it available so that if there were other private funds that wanted to come in whether they were grants or things like that, that those would be allowed to be in there too. And part of the reason why, if I understood it correctly, we did that was because we didn't know where exactly the funding may come from. But we wanted to have a bucket that if there was available funding we could find that and use it there. That's correct, isn't it? [LR240]

MARK CHRISTENSEN: Yes. [LR240]

SENATOR SCHILZ: And you know my, I guess the other question that I would have is, moreover than anything, the beginning part, I mean, what we've seen, and you can

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correct me if I'm wrong, but what we've seen is that when we're dealing with animal agriculture that's over...or agricultural in the state of Nebraska is over a \$10 billion industry annually and we seem to be very competitive in bringing in agriculture jobs and paying like that. If we could find ways to encourage that and start to promote that largest industry and have local buy-in, then it may not necessarily make the process any shorter but it will make that process much more pleasurable or much less onerous for that person coming is. Is that correct? Because they won't see all the wrangling that may go on at the county level beforehand. [LR240]

MARK CHRISTENSEN: Correct. I say it speeds it up because they don't have to go through the application... [LR240]

SENATOR SCHILZ: Sure. [LR240]

MARK CHRISTENSEN: ...to the county to rezone and go because them meetings and hearing are done. That ground is ready to go. But it also, the buy-in part you said, is done. And if I was going to go build a livestock facility, I'd lot rather go to a community that has bought in on the process than go to one where I got to fight the process. [LR240]

SENATOR SCHILZ: Much more proactive. [LR240]

MARK CHRISTENSEN: Yes. It's a proactive approach to bringing in livestock development. [LR240]

SENATOR SCHILZ: Thank you. [LR240]

SENATOR CARLSON: Okay. Any other questions? Okay, thank you, Senator Christensen. Those of you that wish to testify don't be bashful, come forward and we'll listen to you. [LR240]

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BART BEATTIE: (Exhibit 1) Good morning, Senator Carlson and Agriculture Committee. I'd like to thank you for the opportunity to be here this morning. My name is Bart Beattie, B-a-r-t B-e-a-t-t-i-e. I'm a fifth generation farmer from Sumner, Nebraska, and livestock producer. I'm a past member of the Nebraska Corn Board. I currently am serving on the Nebraska Farm Bureau's State Legislative Policy Committee. I'm here today on behalf of the Nebraska Farm Bureau to offer some comments on LR240. Over the years Farm Bureau has been a strong supporter for efforts to grow Nebraska's livestock industry both in public policy and in private sector areas. Our organization has supported past efforts to ensure agriculture and livestock operations are incorporated into Nebraska's strategy for tax incentives for economic development, as well as backing the establishment of Nebraska Department of Agriculture's livestock friendly counties. Our organization is also one of the founding partners of A-FAN, the alliance for the future of Nebraska agriculture, a nonprofit organization that works directly with livestock producers to help them identify community friendly places for livestock expansion and to aid producers as they seek to comply with local, state and federal regulations. Livestock agriculture is one of our state's largest industries and will continue to be the key to future economic viability for our state. For those reasons, we believe it is critically important that as a state, we continue to explore opportunities to help build our local and state economies through livestock development. As a livestock producer, I can tell you the last couple of years have been extremely difficult as we have struggled with lower commodity prices and higher input prices. Having said that, I realize that agriculture is cyclical and I realize that there are better times ahead. It is important for Nebraska that we be prepared to capitalize on the future opportunities when economic viability does return in the livestock industry. Nebraska's corn, ethanol, livestock chain continues to give Nebraska a very competitive edge in growth potential for livestock when compared to other surrounding states. Lower energy costs, access to feed stuffs, a smaller population base, and an abundant natural resources make Nebraska very attractive for instate farmers as well as other farmers looking for opportunities to relocate their livestock operations. To ensure that Nebraska can take advantage of these

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opportunities and the competitive edge we have, we believe there are areas to be explored to further our efforts in growing this very important industry. As the committee considers how to achieve this goal, we would like to offer the following thoughts for consideration. Number 1: Enhance our recognition of animal agriculture as economic development through coordinated and strategic public and private partnerships. While Nebraska does have Livestock Friendly County program, currently there is no overarching state strategy to promote livestock growth. We believe our state would benefit greatly from further evaluation of the opportunity to coordinate expansion opportunities between farmers, their communities, and the state in a way that ensures responsible placement of livestock farms in community friendly locations, but also provides a mechanism for the state to work with local communities to assist them in identifying locations that would help them meet their economic development goals. Doing so would allow the state to better market Nebraska as a place to raise livestock for both instate farmers and those possibly looking to relocate from other states. Furthermore, we believe that there is a need to identify ways that the state can aid communities and counties that are interested in livestock expansion opportunities, but face significant costs in infrastructure development to help facilitate new or expanding livestock operations. Number 2: Evaluate tax incentives for livestock farming. We continue to hear from young farmers that access to capital is the largest factor preventing younger or newer producers from getting into livestock farming. While Nebraska has tax incentives for livestock development and a Beginning Farmer program, we would support an examination of these programs to evaluate their effectiveness and also an examination of surrounding state programs to determine if there are other opportunities to provide assistance to young livestock farmers. Number 3: Streamlining of state regulations and the permitting process. Family farming operations continue to be the backbone of Nebraska's livestock industry and will continue to be in the future. However, there is a substantial cost of permitting livestock operations and meeting the environmental regulations and that is affecting our industry, particularly smaller family operations that are faced with the question of getting larger or getting out of the business. If Nebraska is to maintain its status or possibly compete with

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other states that are seeking to recruit livestock farms, Nebraska needs to ensure that it has a competitive playing field from a regulatory standpoint. We would support an internal review of Nebraska's state livestock regulations in comparison with our surrounding states, from the standpoint of identifying if there are areas that can be streamlined within our Nebraska Department of Environmental Quality process. Lastly, number 4: Consistency in local permitting requirements. One of the biggest concerns that we hear from our members is the uncertainty they feel when attempting to obtain a local county conditional use permit approval for a new or expanded livestock operation. The uncertainty surrounding county approval is a major issue that can create a climate that discourages livestock expansion. We support local control but believe there is a need for further examination if there are ways to help build safeguards for farmers assuring approval if they do what is required by the county. Other states, such as Wisconsin, have established statewide zoning standards based on operation size. Iowa utilizes a statewide zoning matrix that looks at both environmental and community components before siting approval. We believe that there is a win-win option that protect local control, but also provide a level playing field for livestock producers. Farm Bureau policy supports the use of state guidelines to achieve greater consistency in zoning regulations. It also supports the study of issues relating to the siting of livestock farms to determine if there are alternate means that would lead to more consistent statewide approach to siting these facilities. It is vitally important that this issue not be overlooked in any future attempts to enhance livestock industry development. In closing, we, as Farm Bureau, appreciate the opportunity to come before this committee and share these comments and thoughts and would be glad to work with the committee to proactively develop a strategy to ensure Nebraska continues to maintain a strong and healthy livestock industry and provide the opportunity for current and future generations. I'd be glad to try and answer any questions that the committee may have. [LR240]

SENATOR CARLSON: Okay. Thank you, Bart, for testifying today. Is it "Baytee"?
[LR240]

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BART BEATTIE: Beattie. [LR240]

SENATOR CARLSON: Okay. All right. Any questions of Mr. Beattie? Senator Hansen. [LR240]

SENATOR HANSEN: Thank you, Senator Carlson. Nice to have you here today, Bart. [LR240]

BART BEATTIE: Thank you. [LR240]

SENATOR HANSEN: I've been to your facility at Sumner, your hog operation, and it looked like it was a fine road off the highway into that. Was there any road construction, road improvement done at any time through the county ? [LR240]

BART BEATTIE: Where we built that site there was an old county road that had been determined nonuseable, nonfunctional. And I believe, when we built that site, the county determined that once it got to a certain point it was no longer...that they needed to maintain the road past a certain point, but they did work with us to make sure that we had accessible access to that site. But to this point we didn't have to do any large major road improvements. [LR240]

SENATOR HANSEN: But the part of the infrastructure that the county did, do you think you paid that back through your property taxes? [LR240]

BART BEATTIE: Yes, most definitely. (Laughter) Most definitely. [LR240]

SENATOR CARLSON: Okay. Any other questions? Senator Dierks. [LR240]

SENATOR DIERKS: Thank you, Senator Carlson. Bart, it's good to see you again. It's been a few years. You touched on some real valid points. One of the things when we

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talk about expanding the livestock industry, it comes to my mind is, how are we going to get these people paid for the product that they have. Right now the dairy industry is in a tremendous amount of trouble. Right now the pork industry is in a tremendous amount of trouble. I got a report the other day from Kansas State University, an ag economist said the average cow-calf producer over the last nine years has lost over \$200 a head, average. How do we...what I'm looking for is an answer to how to correct that. Where do we come about getting these people to pay more for our product? How is that going to happen? [LR240]

BART BEATTIE: Well, that's...I think that's a question in all of our minds as livestock producers, because obviously how can I sit here and...I mean, some of the questions that you may have are, how can we sit here and talk about livestock expansion when the swine industry, for example, has gone through two years, 22 months of no profits. But as I said in my testimony, we look at agriculture and livestock as very cyclical. And I still believe that, for example, in our operation I'm the fifth generation on the operation. I'm raising the sixth generation and to continue to improve our operation we have to maintain our facilities and they do wear out over time, and we have to somewhat grow our operation to be more viable in the future. And whether it be expansion or just maintaining specific facilities, these points still bring everything together that we need to be able to support our livestock industry, not only on a growth manner, but also on replacing existing facilities, like we're doing in our operation as well. I don't think I've really answered your question because I don't have a crystal ball to figure out how we are going to make the livestock sector more profitable in the short term, but I believe as our country turns around economically, as our world turns around economically, there's still going to be a great need for quality protein source that comes out of the United States and specifically comes out of Nebraska. And I believe that there's going to be a continued demand for product and so, not only one, we have to replace existing facilities that are getting outdated which require new permitting processes, we also have to expand to meet the demand which I believe will be there in the future. [LR240]

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SENATOR DIERKS: Thanks, Bart. [LR240]

BART BEATTIE: I don't know if I answered that very well but I don't have a crystal ball.
(Laughter) [LR240]

SENATOR DIERKS: We'll get together later. (Laughter) [LR240]

SENATOR CARLSON: Okay. Any other questions? Senator Wightman. [LR240]

SENATOR WIGHTMAN: Thank you, Senator Carlson. Bart, thank you for being here. I'm well aware of your operation, have been most of my lifetime. You talk about tax incentives for agriculture and we have that for first-time farmers and a few other areas that we provide some tax incentive. Do you have any suggestion as far as...does Farm Bureau have any tax incentives as far as, or suggestions as far as tax incentives?
[LR240]

BART BEATTIE: Well, I believe the big...like I mentioned, the biggest challenge for a young producer is, is getting the access to the capital. Now if there was a way and I'm not familiar, as familiar with some of the intricacies of the first-time farmer and that, but even if a young farmer that's maybe been in the business for ten years and wants to, has had a hard time expanding the operation on the grain side but is looking to do on the livestock side. You know, if there's incentives for providing if they build a small feedlot, for example, that they're able to receive some type of a tax break for the first five to seven years of their operation. You know, this is something coming off the top of my head. But I know that I'm sure the Farm Bureau has some other ideas that they would be willing to share with the committee and Senator Wightman, I believe, if you want, I'll just get back with Farm Bureau and have them bring forward any ideas as far as tax incentives that would be feasible for the committee to look at. [LR240]

SENATOR WIGHTMAN: Yeah, I don't know whether we've ever had tax increments. I

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don't think we have tax increment financing outside municipalities right now. Perhaps that would be some possibility if that was allowed at the county wide level. So, you know, maybe that is one area that could be looked at. Again, I don't know what the reception would be at the state Legislature, the Appropriations Committee in particular, but... [LR240]

BART BEATTIE: Well, I believe, you know, in some of these when we have the opportunity to expand or increase our livestock on our operations, sometimes we don't always look at the underlying factors that we do bring in. We do more business with the local community, we provide jobs for families. And maybe it's only one or two families you provide a job for but that's economic development. And, you know, I know when we look at, well, let's give them a tax break, well that throws up red flags because that's not revenue being generated at the state level on the tax basis. But the livestock operation is still generating income and providing economic development within those communities. [LR240]

SENATOR CARLSON: Okay. Thank you. Senator Schilz. [LR240]

SENATOR SCHOOLS: Thank you, Senator Carlson. Bart, thanks for coming in today. Just to go on with Senator Dierks question before. Do you think that by expanding numbers of livestock in the state of Nebraska that that gives us a better opportunity going forward to maintain the packing facilities and processing facilities that we have here in the state? Because as you know, as you build those facilities, they tend to depreciate over time and wear out and at certain times people have to make decisions, do we stay here or do we go. So, you know, one of those issues is, does it help our markets that we have processors and packers here, and by expanding our numbers here, does that make that more profitable in the future? [LR240]

BART BEATTIE: I think it most definitely does. Dealing with the packers that we do on our swine operation, you know they have concerns about what future numbers are

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going to be in the state of Nebraska. If they know that they're going to have a base for time to come, when they look at their models and their business plans they're going to decide that Nebraska is a great place to be because we have the numbers. Secondly, as...if I'm a producer in another state and I'm being pushed out by urban sprawl but I still want to have some sense of a farming operation, I have a generation that wants to expand or whatever, and you've decided that maybe I'm going to pick up and move, well, again we can position ourselves in the state of Nebraska that we've got a very viable packing industry both in the beef sector and the swine sector. And, you know, that would be, to me, something that would be an incentive of where I would want to be in the future. And you know as you look at some of our surrounding states, obviously we're competing very heavily with Iowa for the packing industry but we have a lot more opportunities than South Dakota, Colorado, Wyoming, obviously, and even Kansas. We have tremendous facilities here within our state. And I know that's something that we have to ensure that continues to stay within our state. [LR240]

SENATOR SCHILZ: Right. Absolutely, You know, just one other question for you. I don't know if you're aware or not but having worked pretty closely with A-FAN and stuff, they've done some studies out there as to what wages are in counties that are...and basically this comes down to Cummings County and if you look at Cummings County and their livestock development that they have there, on average for wages that are paid in that county, is 26 percent over what the wage is for communities that don't have a livestock facility, so. I mean, obviously, with your operation you've probably seen that. And that over time that it adds more wealth to the community. And you had mentioned that before. [LR240]

BART BEATTIE: Yeah. Most definitely. And I believe our small community, for example, we have three towns, they all consolidate into one school district, and believe me, if it wasn't for agriculture the school would be gone, all three of those towns would be gone because that's what drives all those small communities. [LR240]

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SENATOR SCHILZ: Thank you, Bart. [LR240]

SENATOR CARLSON: Okay. Any other questions? Senator Wallman. [LR240]

SENATOR WALLMAN: Thank you, Chairman Carlson. Thanks for being here. I've been a Farm Bureau member for a long time too. And I think the public should know what our imports are in the meat side. We always seem to hear the exports, but we don't hear the imports. I think that would shock us. And I'd like to see our farm organization say that because we have enough corn here to feed our people meat, the whole nation. And so I think we...food safety is involved, some of these others. And I don't think USDA is always our friend. That's my opinion. But...so that...but I appreciate Farm Bureau and you and animal agriculture because I'm a corn producer. So got to feed it or can't burn it all up in fuel. [LR240]

BART BEATTIE: Thank you. Well, if I may comment on that. I believe in our operation, I mentioned I'm the fifth generation and our operation has always maintained one thing for five generations and that is, the best way to market our grain is through livestock. It's the most efficient way to do it. And I know we've had a tremendous expansion of ethanol industry here in the state of Nebraska. I mean, it's wonderful for economic development. It's wonderful for our livestock operations and well, and it makes a nice piece. But I believe as farmers and farm organizations within our state we still have to grasp where our roots came from and what has made animal...or what has made agriculture strong in the state of Nebraska and to me it's always been the strong livestock industry that we've had. And I believe it will continue. It has to continue to be that way in the future. [LR240]

SENATOR CARLSON: Thank you. Senator Louden. [LR240]

SENATOR LOUDEN: Yes, thank you Senator Carlson. Yes, Mr. Beattie, I agree we have to value add to our agriculture products and that's what Senator Christensen it

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looks like to me with his LRs is finding ways to do that. Now when you talk about tax breaks, the way I understood your testimony, what are you talking about on tax breaks? Are you talking about income tax, talking about property tax, sales tax, when you have tax breaks, where you going to break? (Laughter) [LR240]

SENATOR DIERKS: All of the above. [LR240]

BART BEATTIE: All of the above? (Laughter) No, I believe just any incentive that we can provide, especially for the young people that want to get involved. The young person that wants to put up, for example, a 1,200 head finisher, okay, to provide an extra \$20,000 worth of income because Mom and Dad can't...operation can't support it. So if there's some sort of tax incentive, whether it be personal property tax break on that facility for five to seven years, I mean, I believe any little bit would help that young producer. And I believe, obviously, there's a lot of different areas we can look at but I don't know if I have a really good answer for it specifically, but. [LR240]

SENATOR LOUDEN: Well, I was going to say I was going to evaluate that. Now, I've been down at the Legislature for a little while down there and I've seen these tax incentives come through there like you wouldn't believe. And I mean, this is high-minded lip service is really what it is because a lot of them are income tax breaks. Well, you had to make some money before you got the tax break. Well, when you're starting out the chances are you're not going to make that much money. So to me I always thought that was probably a mute question. Your property tax. Well, then we get back to what was it, LB775, whatever it was several years ago when we would bring in a packing house or something and give them a property tax break. And, of course, that affected your local school districts, your local counties, everybody down the line there. So when you talk about a property tax break, I'm wondering, you know, you realize the state of Nebraska doesn't get much out of property tax. Most of that goes to your local sources, your counties and your towns, cities, and school districts. That's the reason I'm wondering if a \$20,000 property tax break would be significant on some of these counties and some

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of these school districts and, you know, around. So I'm wondering how we would work that one in. [LR240]

BART BEATTIE: I don't believe I have a good answer for you on that. But I guess the reason I bring up the point is that, if there are ways that we can help those producers become successful and get on the ground running, then they have a better chance of making it, number one, and the better chance of being there for the long haul and providing more tax which will go back into the county, into the state, over the longer term. [LR240]

SENATOR LOUDEN: Well, I agree if there's some way of doing it but, see I sat on the Revenue Committee so we go through this, you know, probably six days a week when you're thinking about it of various ways on how we're going to handle this. And up to now nobody has come up with a good idea other than the fact that you cut expenses. Now most of your counties are probably operating about as thin as they can. I mean, I've not seen any county officials around that was squandering much money unless it's Buffalo County. I don't know where the hell them guys, 3.2 billion valuation and a 37 mill levy. I don't know what they do with all their money. (Laughter) Anyway, that is neither here nor there. What I'm wondering, on your school districts up there, all of your property in your area there goes to support your school district, is that correct? [LR240]

BART BEATTIE: Yeah, that's correct. [LR240]

SENATOR LOUDEN: You're one big consolidated district. [LR240]

BART BEATTIE: Yes. [LR240]

SENATOR LOUDEN: And you know what...and I presume is that at \$1.04 your mill levy for your school district there? [LR240]

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BART BEATTIE: Yes, it is. [LR240]

SENATOR LOUDEN: And consequently as your valuations go up, so does your property tax go up. Is there any way that Farm Bureau has researched this that they can find ways to leverage that down or find ways that can be done differently? Because, I mean, this is your, probably 65 percent of your property tax goes into that school. Has anybody thought about somewhere along the line that we can do anything along there? [LR240]

BART BEATTIE: I don't have the answer for you on that but I will be sure and talk with the Farm Bureau representatives to get that information to you. [LR240]

SENATOR LOUDEN: Okay, thank you. [LR240]

SENATOR CARLSON: Okay. Any other questions? Bart, your last point, consistency in local permitting process, you mentioned that. What do you really mean by that? And earlier you talked a little about the uncertainties that exist. So expand on that a little bit, would you? [LR240]

BART BEATTIE: Okay. Consistency on the local permitting process. I believe if you look at other states that surround us, Iowa, for example, they have a matrix system and I don't know all of the intricate details of it, but if you meet certain requirements as far as location, permitting process for the Department of Environmental Quality, several environmental bullets in several things, and you meet this requirement, then you pretty much are assured that you will be able to build your facility. In Nebraska now, you can go through the permitting process, I can be approved by the Nebraska Department of Environmental Quality for a facility, I can go to my local county commissioners and ask for approval and if I get...like in our operation, we were thrown into a special use permit because of the size of one of our facilities and due to some opposition, you know, there still can be, even though we met all the requirements required by the state and all the

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requirements required by the zoning board, we could still be turned down at our local level. And streamlining that process that maybe, yeah, we don't want to take away local control, but yet the question in my mind is, if we've met all of the requirements, why are we still not able to do something in certain situations. And I know there's been several cases up in northeast Nebraska where young people have tried to expand and weren't able to do so just because of local opposition and just because the local board voted it down, even though they met all of the requirements. And this young individual spent a lot, a lot of money to go back and reapply and redo it all over again. And when you're facing an uphill battle financially and you've got to try and start out paying for something that you hadn't planned on, it's going to make for a tough situation. So any way that we can work at streamlining those processes is what I was referring to. [LR240]

SENATOR CARLSON: Senator Dierks. [LR240]

SENATOR DIERKS: I had a second thought, Bart. Thank you, Senator Carlson. What do you think that Senator Christensen's study would do that A-FAN has not been able to do? [LR240]

BART BEATTIE: Well, Senator Christensen's study by getting the land ready to go, I guess, if I use that term, whereas everything is in place, the county level has said yes, this is a site that will work. They've done their due diligence, they've done their studies, they've talked to the local communities, they've basically approved it at the county level. But that's...you asked the question what's the difference between that and A-FAN. Well, A-FAN does a lot of that. And they go out and talk to the neighbors and communities and provide that support and everything. But I believe what Senator Christensen is doing is taking it one step further. When you have the support at the county level, from your county board, that yes, this site will work for a livestock facility, then as a livestock producer when I'm looking for something, I'm going to that chunk of land because it's ready to go. [LR240]

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SENATOR DIERKS: Thank you. [LR240]

SENATOR CARLSON: Senator Christensen. [LR240]

SENATOR CHRISTENSEN: Thank you, Senator Carlson. Thank you, Bart. Not to drag this on any further but it would have saved that young man from northeast some money if there had been a precertified chunk he could have went to, just got qualified from the state, and went forward, wouldn't it? [LR240]

BART BEATTIE: Yeah. [LR240]

SENATOR CHRISTENSEN: Thank you. [LR240]

SENATOR CARLSON: Any other questions? I would make one more statement here because I like the idea of precertification and getting a piece of ground ready for an expansion. But you still...and I don't think you're asking necessarily for legislative action to mandate consistency in the permitting process other than to a certain extent. But you can have a piece of ground that's been approved by the county, but there's an "if" in there. If the right, the right business comes along and they're going to do it the right way. And there's always the possibility that somebody wants that piece of land and somebody...and they could be a valid concern, hey, I don't know if we want this group. We know what problems they had over here, so you still have to maintain the freedom in the local control and you weren't arguing with that. But that's where it gets a little bit sticky, so. [LR240]

BART BEATTIE: Right, correct. But I believe we have the mechanism in place through our Department of Environmental Quality that they would be very aware of bad actors or organizations trying to come in that have had failures in other states. [LR240]

SENATOR CARLSON: Okay. All right. Bart, we worked you over pretty good.

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(Laughter) Thanks for your testimony. Next testifier. [LR240]

DUANE GANGWISH: Good morning, Senator Carlson, members of the committee and guests. My name is Duane Gangwish, it's D-u-a-n-e G-a-n-g-w-i-s-h, and I work for and represent Nebraska Cattlemen members. I'm here this morning to support the local economic development through livestock in Nebraska. I want to build on some of the comments that Mr. Beattie has made and he's given you some very good specifics, and I want to back up and look at it from maybe a little higher altitude for Nebraska's livestock industry. The question is, why is the growth of livestock industry important for Nebraska's future? Today, nearly 20 percent of the beef consumed in the United States comes from Nebraska. We are efficient, progressive caretakers of our natural resources while producing protein for our nation and the world. We have to have a rational well thought-out plan to expand our food production to meet the growing demands of our planet. I want to quote from a report published March 13 of this year by the United Nations population division. "The world's population continues its path toward population aging and is on a track to surpass 9 billion people by 2050 as revealed by the newly released 2006 revision of the official United Nations population estimates and projections". That is a 74 percent increase in global population in just the next four decades. To put this in perspective, in 1961 the U.S. population was 184 million. Today it exceeds 300 million. That's about a 60 percent increase in just under five decades. If agricultural technology and production practices were the same today as 1961, we would either need 63 percent more land mass to produce the same amount or we'd need to decrease our consumption by 63 percent. Another way to view this emerging challenge is to look at where we are in recent history. At our current rate of population growth, by 2030 the per capita land for food production will be approximately one-third of what it was in 1950, on a per capita basis because of our population growth. According to USDA's global grain demand has exceeded global production seven of the last eight years. This has largely been due to drought in several regions and though we have had ample moisture in our back yard this year, Australia is still experiencing severe drought and there will be others in the future. We are also witnessing urban

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sprawl. And the pressure by current administration to expand forest lands and other biomass production for carbon sequestration and the production of cellulosic biofuels, which we believe will directly compete for grazing lands and crop lands for cereal grain production, fruits, and vegetables. Without a statistical shift in the consumption of protein type, the global demand for protein will follow the same growth curb as the U.N. projected, 74 percent in 40 years. In Nebraska we are in the sweet spot of the production of protein of all sources, meat, milk, eggs, and vegetable proteins. With that background, we're here today to explore ideas of how to encourage the responsible growth of livestock production in Nebraska with all stakeholders. In our eyes, beef production is one of the purest value-added business models for rural economic development. We turn sunlight and water into grass for our cows whose calves eat the grain and forages we raise along with bountiful coproducts and are marketed and used in the investment of local labor and capital to produce a wholesome nutritious eating experience. This is a perfect fit for Nebraska producer's work ethic. All sizes of operations are important and needed, but as the cost of operations increase that challenges our smaller producers with the simple economics of scale. The primary underlying challenge of the discussion is size. I was recently invited to address the National Association of Attorneys Generals with the assignment to talk about how regulation is driving concentration. My message was that every business sector which experiences increased regulatory hurdles responds to the increased cost of doing business by getting larger, thus spreading the load over more units of production. This growth is not only a result of regulation but of the increased cost of doing business in general. Agriculture is a prime example with the cost of equipment, energy, labor, and regulation. Virtually all feed yards in Nebraska over 1,000 head are required to have an NPDES permit to comply with state and federal law. The cost of engineering and permitting and construction of a storm water pond can be as low as \$150,000 and easily exceed \$200,000. This cost is infeasible for small operations and to my comments above, you'll see small operations fading and larger operations growing. Now to my main point. The size of livestock operations is growing and growing due to increased cost of operating and decreased margins and increased mechanization. With today's

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technology and management abilities, a 15,000 head feed yard is not large, but it is increasingly difficult to find a location in this state to start such a business. Nebraska Cattlemen fully recognizes that portions of the state are not conducive to these types of operations. However, many are. We are here today to pledge our continued cooperation and discover solutions to meeting this growing demand for food. Thank you for the opportunity, and be happy to answer any questions. [LR240]

SENATOR CARLSON: Okay. Thank you, Duane, for your testimony. And do we have a questions? Senator Price. [LR240]

SENATOR PRICE: More a statement than a question. If your talking about an operation like say 15,000 head and going into an area, we could see and we talked about the swine operation where a county road was upgraded to do it. Then quite possibly then, secondary benefits to the community at large when these infrastructure changes are made because they're just not at the location of the industry but it's getting it to market. So there are more benefits to be derived within that county with an infrastructure improvement due to their moving in, correct? [LR240]

DUANE GANGWISH: Very much so. I'm quite familiar with a feed yard. It's a 12,000 head feed yard and that community in the first ten years of operations, the capital construction was \$3 million and all of that was local, local labor, local materials. And they have about a quarter million dollars a year in payroll all locally. So the benefits are, for local communities are far more than just property taxes. [LR240]

SENATOR PRICE: The natural follow on for me though when I think about we had this (inaudible) gun range bill. People put gun ranges way out in the country. No one is ever going to live around there. Economic development and urban sprawl, whatever now, you know, it's not as feasible. Or if you go in my neck-of-the-woods where they have a rendering plant, now they want to build all around it, now they either have to move that...so my question come down as, do we see...or how do we set in place ahead of

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time resolving the conflict that would naturally occur if success comes. Do you put more of an operation out? Do you have more people moving out there? Now, more people moving out, next thing you know you have that contest of wills because someone is down wind. So is there a way that you foresee that you can set yourself up for success and that's what's heartache when you do realize the success you're aiming for? [LR240]

DUANE GANGWISH: I think there are many small communities in this state and let's face it, and the growth of the livestock industry is going to be in rural areas. It's not going to be in your district, Senator, all due respect. [LR240]

SENATOR PRICE: I already talked to the Timmermans. (Laughter) [LR240]

DUANE GANGWISH: Many of those small communities have difficulty holding population base. I have a home for sale in a small town that I can't get sold because there's nobody moving into that small town. I think with the opportunity to create economic development, there will be jobs, there will be people. I'm not here to tell you that people are going to move into...from Omaha into Farnam or some other places. But there will be opportunities in those locations. I think there will be families that we can keep there if not attract. [LR240]

SENATOR PRICE: Okay. [LR240]

SENATOR CARLSON: Senator Schilz. [LR240]

SENATOR SCHILZ: Thank you, Senator Carlson. Duane, thanks for coming in this morning. Back to your comments on, you know, operations are getting larger, operations are having to deal with more regulations all the time. As we look at this in the intent, not necessarily what the law says you have to do, but the intent of everybody working together. Could you give me a, sort of what your gut feeling is from your members? Would your members be supportive of a process that would go out, and if it

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was attracting a livestock facility from someplace else to move in that would do like the Department of Economic Development does now that before they show anybody property or things like that, they're doing some vetting of those folks to make sure that they're not bad actors, and they make sure that that happens. Would a process like that be supported by your membership, do you believe? [LR240]

DUANE GANGWISH: In all honesty, probably not all of them. (Laughter) [LR240]

SENATOR SCHILZ: Right. Okay. That's fine. Do you see benefits as obvious, from your position? [LR240]

DUANE GANGWISH: Well, I do. I do and Mr. Beattie touched on that in just maintaining our processing facilities. A rising tide raises all ships. We've seen decreases in recent years of our cow population in the state and primarily due to drought. It's going to take some time to build that back up. We have seen interest over the years because of our abundant natural resources here, we have seen interest from other states looking at relocating to Nebraska. The primary burden, or barrier, hurdle, is where do I do it, and what processes do I have to go through in order to do that? And Mr. Beattie addressed that in some of the local opposition are strong supporters as is Farm Bureau of local control, but there's also a need of just as we look into the future the next 20, 30 years of where are we going to produce food. [LR240]

SENATOR SCHILZ: One other question, thank you. As you look at this and then, okay, now let's put your other hat on and you're somebody that wants to move into an area. Do you think that as a process as well that for somebody should be able to say that they have land that is available to put a livestock facility on, if you're going to do this the proper proactive way, should...and Department of Economic Development does this too on like their industrial parks and things like that, that if you want to go out and market that property you have to have certain things in place. Like at auction, like a set price that's already known so that you don't get people coming in and somebody decides,

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hey, this guy wants it, now the price is doubled. Would your membership be interested in a process like that? So as we start to move together when Mr. Beattie was talking about public-private partnerships to move forward I see these all intermingling, coalescing together to come up with a solution that then makes it for that person that you're talking about that wants to come in, he doesn't see all that that's gone on in the past. He just sees, hey, this land's here, I know I have to go to DEQ to get my operation specific, permits done, but do you think that that would be of interest to your membership and be the right path to go down? [LR240]

DUANE GANGWISH: I think the preapproval process has tremendous merit. To what I think might have been part of your question about speculation, if I had three buyers for my house, I would raise the price. (Laughter) If there were limited a number of locations that were available for livestock expansion of a known area, would there be increased price pressures? Possibly. We're firm believers in private property rights. If I can sell my property to the highest bidder, then I might be interested in that. But I think the process of going through and really from a zoning standpoint in saying this area, not this piece of property, but this area would negate some of that opportunism, but would still allow for an entity that wanted to look at an expansion opportunity or a growth opportunity. I think that would be very reasonable. [LR240]

SENATOR SCHILZ: Sure. Thank you. [LR240]

SENATOR CARLSON: Senator Dierks. [LR240]

SENATOR DIERKS: Thank you, Senator Carlson. Duane, welcome to the party. [LR240]

DUANE GANGWISH: Thank you. [LR240]

SENATOR DIERKS: I want to ask a few questions along the line of the questioning I

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gave to, the questions I gave to Bart Beattie. When I started my veterinarian practice in 1961 and you quoted '61 in your testimony, I could go out every day during July and August and vaccinate between 300 and 400 pigs for cholera and erysipelas. Today there isn't a pig farmer left there, not one, not one. There's one fairly large pork factory down there. When I started my practice I did veterinary work on these dairy cows. And we had probably, I'm going to guess about six Grade A dairies and probably somewhere around 20 or 25 Grade B dairies. Now there are no Grade B dairies and there are two Grade A dairies. That Grade A dairy when I started was around 100 cows, now it's 500 cows. During those years...I was on that school board in Ewing for 15 years and our graduating class was averaging somewhere around 25 to 30. This year there will be nine, next year there will be seven, and we're looking at closing the school. The population is gone. This is part of what's been going on since the country was founded but that's an accelerated problem out there. How do we make it profitable for people to stay in business in my country? How do we make it profitable for the ranchers to make a profit in those cow herds? What research have you done to tell us how to make a margin of profit to keep ourselves in business? [L240]

DUANE GANGWISH: Well, to directly answer your question, we haven't done any research as to how that can be done as an association. Part of your question earlier was, how do we get paid more for what we're doing, and I think that's part of your question now if I understand properly... [LR240]

SENATOR DIERKS: Sure. [LR240]

DUANE GANGWISH: ...and that's nothing that the state Legislature or an association can do specifically. But I think as a nation, the first and foremost thing we can do is trade with our neighboring nations. We currently have trade barriers put up by other nations, whether it's Russia who doesn't want to buy our pork because of a perceived human disease, that's a trade barrier. Has nothing to do with...has nothing to do with the production facility. It has to do with international politics. We saw the same thing when

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that stole...the cow that stole Christmas in December 23 with BSE. There were nations that threw up roadblocks that cut off our borders and that, when we lost the market to Japan that was \$300 million a year to the state of Nebraska. Those things are outside of the control of local producers, local units of government, even the state government, but those things are contributing to that. And you hit on the point that nature is that we grow. When my father got out of the Navy in 1949 he bought 80 acres. And not all of his seven children till the soil, (laugh) I have no callouses, but two of his children and one of his grandsons today farm many thousands of acres. But they were willing to take the risk and they were willing to grow and they were willing to invest the capital. And that's free enterprise. The neighbor to the west didn't choose to do that and their farming operation is gone. I don't know that that's anything we can legislate. I think that's the nature of free enterprise and the nature of capitalism that some succeed and some don't. [LR240]

SENATOR DIERKS: Another question. Do you know what the average loss that the feedlot operator takes from the sale of fat cattle today? [LR240]

DUANE GANGWISH: I do. We have done that research and for the last 18 months that's averaged about \$200. Some of that has hit \$400 or \$500 and there have been a few of those people that have made a little money. I'm excluding from those numbers any risk management that they may have chosen to employ. That's just the cattle on their own. What does that mean in Nebraska? Well, in the last 18 months that \$1.5 billion of equity out of this state and I would venture to say that that \$1.5 billion came out of the hands of a relatively small portion of the citizens of the state. But it directly impacts those revenues that you were talking about. [LR240]

SENATOR DIERKS: The uh...one of the things that I keep remembering, there's a researcher at the University of Nebraska that did interviews every year and he did this survey on income in all the counties. Four of the bottom ten counties incomewise in the nation were Nebraska counties per capita income. The single most poverty stricken

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county in the nation was Loop County, Nebraska. Two counties over where my place is in Wheeler County. They had an average per capita income of less than \$5,000. All they do is raise cattle, nothing else. Maybe a little corn to feed their cattle, but this is not big irrigation country, this is just ranch country. How do we talk to those people? What do we tell them to keep them going. This wasn't just an anomaly because I think that out of the top ten poverty stricken counties in the nation, eight of them were from Nebraska and Texas and those were all just cattle producing counties. How do we make it profitable for those people, Duane? [LR240]

DUANE GANGWISH: Well, for the cow-calf producers specifically is...and I am not one, so I'm speaking from a level of ignorance. [LR240]

SENATOR DIERKS: And but you represent a bunch of them, huh? (Laughter) I do too. [LR240]

DUANE GANGWISH: Their largest cost is property tax. You know, when it gets to that point of level they have a relatively small amount of mechanization. They don't need it. They put up some hay, put up...do some things. But in terms of iron that they have to own to ranch, it's not a tremendous amount. And so the greatest burden is that: (a) the cost of the land, and (b) the property taxes that they have to pay on that. Profitability in the cow-calf sector, from what I hear of the numbers the last two years has not been good. Years before that it's been well. We have one of our members who sold 940 pound steers at Bassett for \$1.18. That was two years ago. That kind of rings the bell. But to your point, there are...the per capita income of those is relatively small in some of those sectors of Nebraska. But how can we change that? I don't believe that we can change that until we can enhance our export markets and create the demand on the market side and pull that back all the way through. That's the only thing I see and that's not going to happen at the state or local level. [LR240]

SENATOR DIERKS: Have you looked at all, the possibility of antitrust action? Is

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that...the factor in stockyards. Has the come into your purview at all? [LR240]

DUANE GANGWISH: Um...obviously, as an association we're very in tune with what packers and stockers administration's rules and regulations are. There's obvious concern on a nationwide basis with concentration in the feeding sector, whether it be cattle, pork, poultry, on that side of it. I don't believe that it will ever be a concern on, when you get in front of the feeding sector, or the cow-calf sector. There's too much capital, too much land, too many things that they're not interested in. [LR240]

SENATOR DIERKS: Bart Beattie brought up a point that if people wanted to expand they had to have some of this for them, like Senator Christensen is presenting, to expand. The land that I've seen sell in my district has been bought by what I call funny-money. There was 10,000 acres out there that brought \$800 an acre and it was just rolling Sandhills. You couldn't irrigate it. It was just ranch country and it was bought by oil money out of Texas. Well, the next year he bought another 10,000 acres right next to him and I think he's using it mostly for training bird dogs. But you can't compete with that kind of a market. Someone had to run him up to get it there, so I mean...and it isn't... [LR240]

DUANE GANGWISH: There was two fools that day. [LR240]

SENATOR DIERKS: Yeah, maybe more than that. (Laughter) But this is what I'm getting at. I mean we can talk an awful lot about expanding and this sort of thing, but expansion is pretty tough to do right now. Especially if you're in a down market where you're not making any money, the bankers don't like you very well, so. [LR240]

DUANE GANGWISH: Well, I think one of the biggest thing that affects many of our ranchers as our ranching population ages, and this isn't so much at a state level because we took care of that, but the estate tax and the capital gains tax, those are very big issues when you start coming look at the next generation coming in and have to

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overcome those types of barriers. But back to your point about the ranch that sold for \$800, I wish it was mine. (Laughter) And on a fair and open market, that was what that piece of property brought that day and our policy and our membership would say, good for him. [LR240]

SENATOR DIERKS: Yeah. Well, I'm not saying anything different. I'm just saying what if I wanted to do it, I couldn't do something like that. [LR240]

DUANE GANGWISH: Well, Melody's here today and there's a ranch for sale adjacent to hers and she's not able to do it. She wishes she could but all of us...there's a lot of things that we can't all do that we want to do. [LR240]

SENATOR DIERKS: Thanks, Duane. [LR240]

DUANE GANGWISH: You're welcome. [LR240]

SENATOR CARLSON: Senator Louden. [LR240]

SENATOR LOUDEN: Yeah, thank you Senator Carlson. Well, as you talk about trying to get more money for our product and that sort of thing and, of course, there's nothing the Legislature and some of them can do about that, agreed. So usually, as I've always found out on the ranch, you got to try and cut your cost of production down. And you mentioned, you know, like 1,000 head feeding system or something, where is that break now that you got to have a lagoon and drainage. I mean, if you wanted to go out here and start 1,000 head feedlot, you'd have to have some big bucks in order to just comply with the Department of Environmental Quality, is that correct? Now, how much of it's commonsense and how much of it's necessary? (Laughter) [LR240]

SENATOR CARLSON: We're all taking notes, Duane. (Laughter) [LR240]

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SENATOR LOUDEN: I'll help you out a little bit here. (Laughter) We had a feedlot up there, well, by Antioch and they had to go in there and build a lagoon in that thing and they're sitting by an alkali lake that will eat up tin cans but yet the Department, the DEQ surely didn't want any of that water to spill off of that feedlot into this alkali lake that would eat anything, you know. So the question was, why did they have to build a lagoon? I mean, the drainage wasn't going to bother anything. The next thing is if you have a feedlot you got to have a certain number of acres designated to put your by-products, I guess you want to call it, on there. (Laughter) And I'm wondering, this is all cost of operation. I mean you're not going to make a dime until you've paid for all that stuff. So how can you ever get started when you're looking at that up front? Should that be adjusted? [LR240]

DUANE GANGWISH: Well, I appreciate your questions, Senator, and they're appropriate. I've been intimately involved in helping...I have to maybe take blame for that now, but help be involved in the federal guidelines. EPA, when dealing with EPA regulations in most recent 2008 CAFO rule. Nebraska Cattlemen along with NCBA took efforts to sue EPA because we thought they had gone too far. We had issues with dust, a particular matter. I might only be a little careful in saying that the rules, the statutes that govern who has to do what, you did. Now, you might not have been there at the time but we have had LB975, we've had LB1209 in 1998 was the first of the Livestock Waste Management Act and so those processes have been in place since 1998. The Clean Water Act was passed in 1972. It was adjusted in 1986 and we've had about 21 iterations between federal and state environmental laws to 2008. I just gave this presentation to the Assistant Attorney Generals. To your point about the alkali lake, the definition of waters of the state, whether it's drinkable, potable, or any other description you want to make to it, says, everything above and below the surface is waters of the state. And you cannot discharge pollutants into that water regardless of the quality of the water that's there. So can we adjust that? I think you can, but you would have to...you can only...you have to be at least as stringent as EPA and you have the liberty of going beyond EPA. Today I would tell you that when EPA's 2008 CAFO rule came

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out, there was no necessary changes to Nebraska's statute to meet that elevated level of regulation because we were already there. So, I think we're doing a good job of protecting our resources. Some might say no, but I believe in the whole we are. [LR240]

SENATOR LOUDEN: Well, I agree we're protecting because I'm on the Natural Resources Committee and we went through a lot of that stuff. We were protecting our resources but at what price? You know, yeah, you can have the finest country in the world to live in but if there's nobody can make a living there, why I guess you go back to the Buffalo Commons then, is what you'd do. And this, when you talk about Loup County down here that are ranchers, you know, how much of that is forced on them either by property taxes, as you say. Well, when you get into property taxes, most of that is...well, they always say, for state average about 65 percent of that is to support schools. Well, if there aren't any people there, how many kids are going out of that Loup County to school and if that's the case, then are those people that can't afford it supporting a school system for some town some place. And this is what...when you say, you can't legislate for increased revenue, but there is legislation that could be done to increase their bottom line or their profit by taking off some of their cost of operation. And you...you know, I'd appreciate any ideas you have on which ones could be done. [LR240]

DUANE GANGWISH: Lady Justice holds that scale and you know as within state revenue it comes from minute amount of fees and the remainder is sales tax and income tax. You can trade one for the other, but who is the winner and who is the loser and I don't have any recommendations for you. [LR240]

SENATOR CARLSON: Okay. Thank you and just joining us is Senator Dennis Utter from Hastings. Welcome, Dennis. Any other questions? Okay, thank you for your testimony. [LR240]

DUANE GANGWISH: Thank you. [LR240]

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SENATOR CARLSON: Next testifier. [LR240]

ELAINE MENZEL: Good morning, my name is Elaine Menzel, M-e-n-z-e-l, here on behalf of the Nebraska Association of County Officials. And I'll just make a couple of comments. LB6, 46, I believe, was legislation that as you know Senator Christensen introduced and we did support that legislation and we continue to support the efforts of this interim study. A couple of aspects of the bill that are particularly appealing are the local decision making and the incentives to counties for economic development, and we continue to support those aspects. We also will look forward to working with you in the future and do what we can to assist. Just a couple of additional comments based on questions that were raised during earlier testimony is, I believe there has been an examination of TIF for counties, Senator Wightman, and I can certainly do some additional research when I get back to the office and get back to you on that issue. And then, Senator Louden, your comment about counties being fiscally prudent, I would concur with that. We do have a zoning administrator here today and I would ask that you defer the technical zoning related questions to him. That's John Johnson and he is our planning and zoning administrator and president of the affiliate organization of zoning administrators. So I will attempt to answer any other questions if you have any for me. [LR240]

SENATOR CARLSON: Okay. Thank you for your testimony. Senator Wightman.
[LR240]

SENATOR WIGHTMAN: Thank you, Senator Carlson. Thank you for being here. I agree that probably there's no way to do TIF financing now but we probably have to look at new legislation if we were to even consider it. [LR240]

ELAINE MENZEL: That's correct. And I believe there maybe has been a look at it in the past but I don't remember the past historical... [LR240]

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SENATOR WIGHTMAN: And there's always a lot of opposition from the people that are paying the taxes. I understand that, so. [LR240]

ELAINE MENZEL: Yeah. [LR240]

SENATOR WIGHTMAN: Thank you. [LR240]

ELAINE MENZEL: You're welcome. [LR240]

SENATOR CARLSON: Any other questions? Okay, thank you for your testimony. [LR240]

JOHN JOHNSON: Senator Carlson and the rest of the committee, my name is John Johnson, J-o-h-n-s-o-n. And I'm the gentleman that Elaine just referred to. I am the zoning administrator for Madison and Pierce Counties. And I also am the president of the NACO affiliate for planning and zoning and I'm the first vice president for the Nebraska Planning and Zoning Association. I just want to, first of all...a lot of my background before coming to Nebraska was in economic development, both as a planner and a practitioner. And this, as been mentioned somewhat before, getting a piece of ground ready for what's considered a turnkey operation or that type of thing, is standard in industrial and manufacturing economic development. Places like to walk in, be able to plug in their machines and go, and we see that all the time and every state tries to outdo another with different incentives. There's no reason a form of that couldn't be done with livestock. As far as some of the technical issues that were brought up about zoning and that type of thing earlier, currently that there is statute...I don't remember the specific subsection but it's part of Chapter 23.114 and it was brought out during the LB754, the livestock friendly bill. It allows the county to do a determination and this determination is basically done and it's before...it can be done before the official application process by an applicant. And basically the way we've interpreted it is that

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determination basically sets the conditions that a conditional use permit would be subject to and the statute requires the county to adopt those after the regular process is completed with the applicant once they go through the public hearing process and so on to officially adopt those same conditions unless there is a substantial change in the plans. So with what we have now, we could actually do a determination. I would recommend it would be animals specific, whether dairy cows or feeder cattle or finishing hogs or meat goats or anything like that. And generally the conditions can be put on once you have an operator and bring that person in, they could go through the public hearing process and then get their permits. So there wouldn't be as much, unless the plans are significantly changed and they could be somewhat general. I'm sure a lot of counties would take it that way. You know, if they're going to have a finishing hog facility, deep pits, two buildings, that type of thing. If it's a feedlot, the number of pens, whether or not they'll need holding ponds or debris basins and how many acres it will be required to spread the affluent, and so on. So that is something that could be done to at least say the zoning is mostly in place. We can't issue a conditional use permit on a facility that's still green ground, if you will, but...until we know more of the specifics. But we could basically look at them and say, yes, we can do it this way. Also closed facilities should be looked at as well and if there was a conditional use permit issued on a closed facility, that could look at being reactivated and also I recommend at the same time that DEQ and any other regulatory agencies that would be part of this, come in and make a checklist of what would have to be done to upgrade a particular facility. I think there's a lot of closed facilities now, both feedlots and hog facilities primarily, that could be reclaimed. And sometimes it might require a new building or a different type of waste collection system, but it could be done. And I would encourage the state, both the Department of Economic Development and the Department of Ag, to list these facilities on their Web sites like is now done with industrial spots. I mean, we have the Vishay building in Norfolk that's listed and available and some other ground. And I think that we need to do it statewide, not just livestock friendly counties. And some of the things that I've come...in my almost eight years doing my current job, we've had one new feedlot in both counties that was a 15,000 head feedlot in Pierce County that is now a

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backgrounding facility for dairy cattle and it's about 13,000 head occupying it. But we've had either new...we've had quite a few feedlot expansions but that was the only substantial size new feedlot that we've permitted in both counties. We've had between the two counties approximately 15 new hog barns have been approved. Some smaller, 600 head. Most about the number that most folks like is 2,460 head of finishers because that keeps it a medium facility, now that we've gone the shirt sizes on facilities with small, medium and large. Some of the other things I'd like to inform you about quickly. There are good educational efforts going on amongst many groups. My groups are trying to educate folks on zoning. A-FAN and Farm Bureau and others are trying to educate their...not just their members, but other folks on the importance of livestock and agriculture in general. One of the things we talked about was a unified statewide thing. Just a couple of things on that. First of all, not every county, even if it's rural, for whatever reason, is really interested in expanding their livestock sector. There's a lot of folks out there...and a lot of them are farmers, that are scared by large operations and out-of-town operators, particularly out-of-town operators. And I'm not just talking about someone trying to relocate a dairy from Holland or California, I'm talking about a guy from the county south of the border and south of your own county line. (Laughter) I mean, they're as foreign as that martian on the Bugs Bunny cartoon to a lot of folks. That's some of the things we see out there. So that's something, the more education on facilities and facility management. I know that particularly the pork producers have done a lot. We have a Nebraska model out there and the more people that can see that understand a lot of the things that the 10,000, 20,000 head units aren't the norm anymore. They like to put a small finishing operation in one or two buildings on pivot corners and that type of thing and do some contract feeding and provide a income for the farmer. And with deep pits and other things as opposed to lagoons of the past, it seems to have worked. And that's what we've permitted a lot in my two counties. By identifying these spots ahead of time, you'd also identify the counties with interest in this. I can think of a couple of counties just in my area that would not be interested in doing this. We have several counties that probably would and probably mine would be part of those. We've also done some things, and I know other counties...I can't be

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specific on the same thing. When I started almost eight years ago, the number 300, what I call now head equivalent since everything is based on a feeder cow, 300 head or animal units, if you will, were kind of the trip number. If you had 300 head or more, you were required to have a permit. One of the things that many counties have started to do, Pierce County, for instance, has raised that number to 1,000. And 1,000 animal units or head equivalent of feeder cattle, that's where a large unit is defined by DEQ, and EPA steps in, and any size below that you do not need an operation conditional use permit in Pierce County and they're A-1 or primary ag zoned. And in Madison County, they've increased that number from 300 to 500. Madison County applies that and they have two primary ag zoning districts, one north of the Elkhorn River and one south and they do it in both. Just a couple other things for food for thought here. Zoning in my counties have been there for a long time and a lot of counties, particularly western counties it's fairly new. And it was pushed by people that were really scared by large livestock operations coming in. And because of that you could say it's developed a link between zoning and making zoning antilivestock. That's not actually true. It's time for farmers, particularly livestock farmers, to take advantage of zoning out there. We've talked about a lot of the urban intrusions, if you will, and urban sprawl. The livestock farmers have to be out there to get these counties to stop allowing nonag uses in ag zoned land to look at limiting acreages and allowing subdivisions. And in rural Nebraska, we see a demand for quite a few acreages. A lot of those, and Census Bureau statistics will back it up, are people moving from a town inside the county or a town close to that county out into the country. And what happens is they create a vacant housing facility in the town, which sometimes is filled. Quite often we've seen that in places like Meadow Grove and in Madison County where that house is then bought up and sold as a rental. And the value of the house then depreciates and yes, they have a house in the country that might even be worth a quarter million or more dollars but it might be on an area that was only serviced by the county roads once or twice a year. It might not have had a school bus go by it and now you have both the school district and the county having to get out there more and they actually spend more on that one acreage than what the taxes that they receive off that acreage is worth. A study on that was done and...I'm having a mental

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block, but the county that Lincoln is in, and so they were basically losing \$1.50 for every dollar that they spent on taxes for acreages. I'm not talking about subdivisions where you concentrate. That's a little bit different but the acreages itself. And some people see a rural Nebraska covered with acreages with people making millions of dollars working on the Internet and not necessarily in ag. And one of the problems with that, is we don't have high speed Internet available in every county let alone the people that want to live on acreages out there making their living selling stuff on eBay. One of the things that I've seen an increase of lately, is not so much you expect odor complaints from feedlots or hog facilities. I've gotten very, very few of those. What I get complaints about would be there whether there was livestock there or not. It's machinery traffic on the county roads, a guy's late for work, he can't get around the combine, and he can't get around the tractors pulling the wagons, the grain wagons behind them. Pivot motors across the street. A guy opens a window and he's got a diesel motor operating without a muffler on it. Grain bins running dryers out in the country. Those are a lot of the complaints that I'm receiving and in most cases it's from people that have never lived in the country before. And so that's a thing we have to look at as well. And we also...one other thing I'd kind of like to address. And...is we see that lots of times the acreages are created not because someone new is moving, it's because the farmer is going to leave the farmstead to his son and the farmer is going into semi-retirement and he wants to build a house over in the pivot corner. Even though that he owns the land or he and his son together own the land, he is required by the bank to have five acres or less and in a lot of cases, sometimes ten, depending which banks they go through. So even though the counties allow two houses, a lot of counties allow two houses on a farm, he's got to split that off and make it an acreage. And that's something that mortgage companies and banks and everything are pushing. We also see the same thing on some of these hog barns that we've talked about in lesser extent or on feedlots, but these hog barns are also split off and they're put on five acres. Well, that works. I mean, they can still raise their hogs and that type of thing. The problem you run into that's no longer a farm. Under the statutory definition you have to have 20 acres or more and generate \$1,000 in revenue. So you have a farm-like facility but it's not a farm, regardless if the operator lives on site or not.

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Just one other thing I'd like to talk about real quick is that in Iowa, with their matrix, which Madison County has developed a matrix. It's not a pass and you automatically get approved, but it's more of...we go back and check that matrix every year and make sure people are doing what they said they were going to do and if they're not, they lose points and they actually could be in jeopardy if they fall below a certain number of points of losing their permit. It's more of making...it's a way to make sure that they're still operating correctly. But in Iowa the county board of supervisors, the main siting is done by their Department of Natural Resources. The county board of supervisors there can and most do vote on livestock facilities but they do not have veto power. And it's not a zoning thing, it's something that the DNR takes under advisement. I am familiar with Carroll County, my wife is from there, Iowa, and I do know that their board of supervisors voted against a facility a couple of years ago. They felt it was too close to the city of Carroll and so on. And that was overruled by the DNR. So the local control that we have here is something that we like. And don't take in the wrong context the strong amount of zoning power that you've seen in the news here. You know, after years of trying to put up with Gaddafi, it was the zoning administrator that wouldn't let him put up his tent. We're not quite that strong but remember that it was some guy like me that said, nope, you can't do that without a permit. (Laughter) Now get me a translator. So be happy to answer any questions. [LR240]

SENATOR CARLSON: Okay. Thank you, Mr. Johnson, for your testimony. Any questions? Yes, Senator Wallman. [LR240]

SENATOR WALLMAN: Thank you Senator Carlson. Yeah, thanks for being here John. I live in one of those counties next to Lincoln, so it's Lancaster. [LR240]

JOHN JOHNSON: Right. I'm sorry. (Laughter) [LR240]

SENATOR WALLMAN: And so, I don't live there but I have property there. But they value those acreages a lot higher. So I think the county is getting more income there,

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but they're complaining about their high property tax. Well, I am too. But...so I went into the state of Kansas and Kansas state values the property according to soil type, according to income producing, and they have a completely different formula. So if we had something like that I think, you know, like livestock facilities and that, now if you lose money...one of my good friend of mine has a really high dollar hog operation, he still pays high property taxes even though he's losing money. And because he's zoned as a livestock operation and so it's in the millions of dollars, and so the bank says it's only worth a half a million because of the income it produces now. So the zoning, I think, you actually perpetuate higher property taxes, don't you think? [LR240]

JOHN JOHNSON: Well, don't get zoning confused with how properties are valued because the assessor has different categories. We look at land use. For instance, in my counties, if you have an 80 acres that some day you might want to put a subdivision on and its been zoned rural residential, you're farming on it, you haven't had that subdivision implemented yet, you're paying the same as probably your neighbor if you're using it the same way, row crop or whatever. You're paying the same even though it's zoned rural residential. You might have an agricultural property that has five lots splits on it, five different lots. It's being used as a whole ag area because those five lots are there that...each one of those five lots are being taxed at a higher rate than the rest of the farm ground. So it's not the underlying zoning. It's how the assessor values that property. So you can have something zoned rural residential, once it's split up in lots it's going to be worth a lot more. But until that time, it's not treated any differently than the similar piece of ag zoned land. But you could have ag zoned land with lots on it that's being taxed at a higher rate even though it's being a farm. [LR240]

SENATOR WALLMAN: Thank you. [LR240]

SENATOR CARLSON: Okay. Thank you. And while Mr. Johnson was giving his testimony, we had two other senators join us, Senator Galen Hadley from Kearney, and Senator Annette Dubas from Fullerton. And Senator Dubas is the Vice Chair of the Ag

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Committee. So, welcome to the two of you. Senator Price. [LR240]

SENATOR PRICE: Senator Carlson, thank you. Mr. Johnson, thank you. In your testimony...you know, in Sarpy County, I heard there's a little question on valuation of the land particularly of the acreages that's come up of lately. But did I understand correctly where you said the mortgage companies and banks are...drive the requirement for the partial that's split up to be at least five acres, that's the driver for what it is? [LR240]

JOHN JOHNSON: Yeah, it wasn't uncommon for a lot of counties to have a minimum lot size of 10-20 acres, and like when I started at Madison County it was 40 acres. If someone wanted to build an acreage, even if they could get approval from the county to be less than 40 acres, they had to go down real small in order to be able to go through a conventional bank and that Farm Credit Services or that type of thing. So there is a very driving force. And even on farmsteads we see that a lot now. If someone wants to put in...get a refinance or that type of thing, we see a lot of people splitting off land to be able to meet the bank requirements. For instance, I live on 32 acres and if I didn't have the bank that I have, I wouldn't be able to get a conventional mortgage on it. [LR240]

SENATOR PRICE: Thank you. [LR240]

SENATOR CARLSON: Okay. Any other questions? Hearing none, thank you for your testimony. [LR240]

JOHN JOHNSON: Thank you. [LR240]

SENATOR CARLSON: Anyone else wishing to testify? Well, if not, that concludes our hearing. Thank you for coming. We'll take a break until 1:30. And this afternoon we have LR103, a study to examine the duties of riparian landowners, and LR104, to study mechanism. [LR240]

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SENATOR DUBAS: Well, good afternoon. My name is Senator Dubas. I'm the Vice Chair of the Ag Committee and this is on LR103, which Senator Carlson, who is the Chair of the Ag Committee, will be presenting to us. So I'll be presiding while he's on the other side of the table. Just a few reminders about what you need to do during the hearings. First off, I think the sheets are back by the door. Fill those out with the pertinent information and place in the box on the table. We'd ask that you state and spell your name for the record in case the committee clerk needs to verify or clarify anything in your testimony. I'd also ask that you either shut off your cell phones or turn them to silence modes so that it doesn't interfere with the recording equipment or disrupt the hearing at any time. Is there anything else I need to remind people of? Well with that...right. There is no pro and con legislation. And I guess we will...I will go around the table and just...I know I was late this morning so I didn't get in on the introductions. But we'll start over here to my right, Senator Dennis Utter from Hastings; Senator Tom Hansen from North Platte, I almost said Norfolk, (laughter) sorry; Senator Norm Wallman from Cortland; Senator Cap Dierks from Ewing; committee counsel or research analyst, excuse me, Rick Leonard; Senator Scott Price from Bellevue; Senator Ken Schilz from Ogallala. We have Senator Mark Christensen from Imperial; Senator John Wightman from Lexington; and Senator Galen Hadley from Kearney. We thank the senators who aren't on the committee for coming and showing an interest in the issues that the Ag Committee deals with. With that, I will turn it over to Senator Carlson for his opening remarks on LR103. [LR103]

SENATOR CARLSON: Thank you, Senator Dubas, and members of the committee and other senators that are here today. Appreciate your attendance and your participation. My name is Tom Carlson, T-o-m C-a-r-l-s-o-n. Everybody on this panel understands and has a pretty good feeling of what's happened in the last two years on our work on the rivers and how we've really made headway in getting rid of the invasive vegetation.

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In the process literally made every environmental group that the river is important to, satisfied and happy and I know that we've saved some water in the process. But you will also remember the last session when I had LB98 to extend the work for four more years, that Senator White brought up a law. And the law was 31-224 that was written in 1911 and it's on watercourses, drains, or ditches; annual removal of rubbish by landowners or tenants. And it says: It shall be the duty of landowners in this state, or tenants of such landowners when in possession, owning or occupying lands through which a watercourse, slough, drainage ditch or drainage course lies, runs or has its course, to clean such watercourse, slough drainage ditch or drainage course at least once a year, between March 1 and April 15, of all rubbish, weeds or other substance blocking or otherwise obstructing the flow of the water in such watercourse, slough, drainage ditch or drainage course, whenever such obstruction is caused by any of the acts of the said owner or tenant, or with his knowledge or consent. And I don't go back that far, (laughter) but I'm venturing since 1937 we became a Unicameral, this law has probably never been referred to or followed or worried about. And there's...and so that's part of it. We need to look at this law because the Legislature certainly needs to have the freedom to pass a bill that provides dollars to solve a problem with or without landowner participation. But as I would read this law, if it was strictly adhered to, there could be no cost-sharing even. It's the responsibility of the landowner. So in a sense if that was strictly the law and we enforced it, the Environmental Trust is out of business. They provide grants and some of them on a cost-sharing basis. But that wouldn't be allowable under such a law. But there's some arguments when you get into the wording: such obstruction is caused by any of the acts of the said owner or tenant. Now another thing enters the picture, and I got a letter from constituents near Franklin where they've had land on the river for generations and they have wanted to do something in removal of trees and vegetation and were...whether they were told or they had the idea that they just can't just go out there and do that. And I think they're correct because the...we have to be careful about who does what on the river and so I think that the Corps of Engineers would be very apt to see somebody out there moving trees or whatever, according to this letter they were told they can't do it. So then you get back into the law.

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Even if they cause something, they didn't think that they could go out in the river and do anything about it. But the point is with the vegetation that has developed in the Platte and in the Republican, and it wasn't caused by the landowners, it's just such an overwhelming problem. So we need to be able to address it in the proper way. And then that's part of this study and the other part is that once we finish the job the first time and get things cleared up, we've bought some time. We don't know how much time because that's part of the reason we extended the work four more years because we need to see how much time we've bought. And then we need to see what kind of a maintenance program it's going to take. And it's reasonable to conclude that that maintenance program is at least a cost-sharing plan on the part of the landowner. So what should the responsibilities be of the riparian landowner as we move forward? So that's what this study is. And I'm interested in seeing what kind of testimony we have and what kind of ideas are put forth. And that's the end of my remarks. [LR103]

SENATOR DUBAS: Thank you, Senator Carlson. Do we have questions for Senator Carlson? Senator Price. [LR103]

SENATOR PRICE: Thank you, Senator Dubas. Senator Carlson, one of the first things that comes to my mind when you talked about the maintenance period for the work is, when...and if anybody wants to address it when they come up is, when does that begin? I mean, you think of fast growing plants that we talk about, particularly with the phragmites, and we have four years. And we say, we would wait four years before we start a maintenance program or would the owners who are there right now have to start the following year after a clearing? I mean, we obviously can't wait a period of time to see...we need to start sooner rather than later and not wait until the end of the four years we have with that. And so, that was one of my main questions is, when do you envision that period of maintenance for whomever will be conducted have to being? [LR103]

SENATOR CARLSON: And the honest answer is, I don't know. But a lot of the chemical

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that was used has a five-year guarantee. Now, you can put on chemical but in the first year everybody is going to miss some, so there's touch-up work necessary. And the people that applied the chemical are going back hitting those spots. But if it's a five-year guarantee, I hope we have five years. And then we'll see what it looks like. So I don't think it's an urgent thing that landowners have to be uptight about, I got to do something next year. I don't think so. [LR103]

SENATOR PRICE: Okay. [LR103]

SENATOR CARLSON: But it's certainly a good question and that's what we're trying to figure out. [LR103]

SENATOR PRICE: And then would you see that following into my next part of it would be. There were those property owners when we were out looking this summer who refused to allow the Task Force to work on their side of the river or their side of the channel. I mean, how do we propose if you won't let anybody in to take care of the problem, now you've got a neighbor parked right next to you...you know, like with the noxious weed issue, you got a neighbor polluting you downstream, we've done a lot of work, where will we have the jurisdiction to enforce, to mandate that this happen because that's already...you're throwing good money after bad then. [LR103]

SENATOR CARLSON: And that's also a good question. I think that's why when you look at a loss such as this plus the noxious weed law, this law you probably don't want to do away with it in its entirety because it does define a responsibility. We need the freedom to decide how much help we can give and how we do that. [LR103]

SENATOR PRICE: Thank you. [LR103]

SENATOR DUBAS: Senator Wightman. [LR103]

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SENATOR WIGHTMAN: Thank you, Senator Dubas. As attorneys we deal with this 31-224, I think that's the section number, quite often. But it has to do with watercourses mostly that run through somebody's land and somebody can block it to try to keep the water off of himself, place a dam or an obstruction and then it backs up across the upper landowner, and then that happens frequently. Or somebody may want to dam the water and have it there but it may shut off a water supply for livestock and so I'm not sure this was ever intended to be in what now, I guess, we define in the Platte as a navigable stream, which is questionable. But at any rate I'm not sure it was ever intended and it's frequently used in a water law involving two landowners, but I don't know how often it's ever been used, if ever, to block the flow in the river. Furthermore, until it...if you read the section itself...I had it open here a minute ago to that, much of the time when you've got phragmites growing along the edge, it really isn't obstructing the water. The water is still going down. It's certainly not blocking the water flow. So if you were going to go in ahead of time, it seems to me you've got a different situation than if you waited until it blocked. Then maybe the riparian landowner does have some obligation. Furthermore, frequently you have landowners on two sides along the Platte River, probably along the Republican as well. So my question is, much as you stated, that whether it was really ever intended to apply to major riverbeds, but I think it was to apply to adjoining neighbors and watercourses that go through their land, but. [LR103]

SENATOR CARLSON: I agree with you. I think that's really more what it was geared toward, not the streams and the rivers that that water ended up draining into. But that's...it isn't 100 percent clear. [LR103]

SENATOR WIGHTMAN: I think you're right there. [LR103]

SENATOR DUBAS: Other questions? Senator Hansen. [LR103]

SENATOR HANSEN: Thank you, Senator Dubas. Senator Carlson, it hasn't been that many years ago that the farmers along the Platte, anyway, took care of their banks, and

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they also put car bodies in for bank stabilization, fill that up with sand so they wouldn't, you know, erode their banks. They would graze cattle along the side. And they would also burn any vegetation that came along during the course of the summer. My question to you is, what changed? Why don't they take care of their own? Somebody told them not to do it but I don't know who it was. We don't allow car bodies...and they're not very pretty... [LR103]

SENATOR CARLSON: No, they're not. [LR103]

SENATOR HANSEN: ...to go along and see car bodies in the river anyway, but riprap of some sort, I don't think any of that's allowed now. [LR103]

SENATOR CARLSON: Yeah, and I don't know the answer to that. But certainly there's a real hesitation...well, I know of an individual that went into the Platte River and tried to change a little bit to build a fishing pond or a pond that he could even have a fish farm on. He got fined. He got fined pretty heavily and all he did was move some sand around. So there is reason why people hesitate to go out there and do a whole lot. I don't know...I don't understand the exact situation that occurred there, but I know that he tried to change the flow of the water on the Platte River, just on a portion of his land. He got fined. [LR103]

SENATOR HANSEN: And to follow-up with what Senator Wightman said when the Corps of Engineers took over, made it a navigable river and they took over control of it, I think if memory serves me right that's about the time that the river banks and the rivers started filling up with rubbish, as the old law said, so. And people quit taking care of them. [LR103]

SENATOR CARLSON: Could be. [LR103]

SENATOR HANSEN: It may be a coincidence, but I don't think so. [LR103]

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SENATOR DUBAS: Other questions? Thank you, Senator Carlson. [LR103]

SENATOR CARLSON: Okay. [LR103]

SENATOR DUBAS: We have our first testifier on LR103. Again there's no proponent or opponent, just come up and make your case. [LR103]

CHARLES BROOKS: (Exhibit 1) Good afternoon, members of the Ag Committee, senators, Senator Carlson. My name is Charles Brooks, C-h-a-r-l-e-s B-r-o-o-k-s. I am the Phelps County weed superintendent taking care of the land right here in Phelps County where we're having the meeting. I'm also the chairman of the Riparian Task Force and my testimony today will reflect a few of the comments and a few of the ideas that have been talked about in the meetings of...some of them come from people that have come in and spoke to us. Some of the comments are just comments I've heard from members of the Task Force and I apologize for it's length, but we've got a lot of topics that we'd like to kind of throw out and help address or see what we can do to put some ideas out there for address this problem of whose responsibility it is. The Riparian Vegetation Management Task Force is in the process of developing recommendations for streambed vegetation management control. We've had some discussions arriving at some preliminary considerations. The following is a summary of some background information and preliminary conclusions. And so we'll start first and talk about the conditions of the Platte, Republican River streambeds. The streambeds have been clogged with vegetation. Invasive plants including noxious weeds, phragmites, salt cedar and purple loosestrife are intermingled with willows, cottonwoods, and other vegetation. Vegetated sandbars are resistant to scouring even with increased flows. Many areas will require mechanical action to incorporate treated vegetation. The streambed vegetation invasion has been caused by certain activities: water storage developed for flood control, irrigation, recreation and power generation and we had a ten year drought, and during this time we've had the arrival of nonnative invasive

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riparian plants that have come into our ecological system. This condition of the streambeds is impacting water flow and depletion, flood risk, endangered species, hunting, fishing, recreation and other use. It also is hindering our compliance with river compacts and agreements. Our ownership situation. The riparian owners, landowners, own the streambed. The state owns the water and the streams. Landowners are responsible for controlling noxious weeds on their lands including the streambeds. Overall streambed vegetation management responsibilities are in question. What should be the role of the riparian landowners? What should be the role of the state and others? The owner of record information needed for fully implementing noxious weed control is lacking in the Platte River. Also ownership lines in the streambed change with the thread of the stream. Streambed vegetation management. Almost all of the streambed in the Platte and Republican Rivers will be treated by the end of 2009. The Platte River will have 549 miles treated and the Republican River has 202 of the 243 miles treated. Actions needed on the treated areas. Some mechanical actions are needed to incorporate or dislodge the dead vegetation. Follow-up treatments of skips and not adequately controlled areas need treatment as determined by fly-overs. Long-term actions needed to prevent reoccurrence of vegetated streambeds. Preliminary thoughts are that riparian landowners should have some responsibility as long as with other authorities having responsibility for planning, assistance, support and oversight. It is felt that input from riparian landowners is needed before final recommendations are made. Some current responsibilities and authorities. Landowners are responsible for control of noxious weeds as determined by the county weed control authorities. There is no clear landowner responsibility for controlling nonnoxious weeds and needed mechanical actions in the streambed. NRDs have the authority to address vegetation in the streambeds, if it will prevent damages from flood water or sediment, provide flood prevention and control or development, management, utilization and the conservation of ground water and surface water. Weed management area approach. The weed management approach has allowed the use of combined authorities. Grant funding of 100 percent contributed greatly to the completion of the initial treatment. The questions now are: What funding and expanded responsibilities and authorities are needed for

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completing the mechanical actions on the treated areas? What funding and expanded responsibilities and authorities are needed for long-term maintenance and prevention? Preliminary conclusion. We should use the existing tools to complete the needed actions on the treated areas. These tools should be managed and strengthened as follows: On our weed management areas we feel strongly that we have a continued use of coordinators. They have a single purpose in addressing those problems on the river and we found them to be very helpful to us in our initial treatment. We need to expand the partners to obtain more input and support. Some grant funding should be available for weed management area base operations. It's critical that we can keep these weed managements even active even if they don't have a large grant coming in to fund them. We just don't want them to, you know, fold and not be active. Grant awardees should be required to use the Nebraska on-line weed management program to meet and share experiences with other weed management areas, to attend briefing and training sessions and other appropriate and needed requirements. Riparian noxious weed control. The following are needed to strengthen the delivery of the noxious weed program. Restore general fund support of Nebraska Department of Ag Noxious Weed Control Act responsibilities. Regular budget appropriation to Noxious Weed and Invasive Species Assistance Fund, which is our grant fund that we can grant out to weed control activities. Multi-tiered noxious weed classification with species and invasive level specific control strategies. All county weed control authorities should monitor and map locations of riparian noxious weeds including the upland sites, notify landowners and require acceptable control plans. Strengthened Nebraska Department of Agriculture noxious weed program can make this happen. Natural Resources District support. We support...all NRDs along the Platte and Republican Rivers are involved with weed management areas at some level. Full NRD leadership and support is needed for monitoring the overall condition of streambed vegetation, developing an overall vegetation management plan, and providing funding assistance. Ownership of the Platte River streambed. We need to encourage county registers of deeds to update owners of record in the streambed for purposes of state mandated programs as well as for taxing purposes. Also consider options for establishing permanent boundaries in the

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streambed. Long-term plan for maintenance and prevention. A survey of the Platte and Republican Rivers riparian landowners is planned to get their input into the development of recommendations for a program for preventing the reoccurrence of vegetated streambeds. Plans are to have the survey results summarized by December. Thank you. [LR103]

SENATOR DUBAS: Thank you very much, Mr. Brooks. Before we take questions I would like to recognize a special guest in the audience, Senator Ed Schrock who is very familiar with this area and has worked on these issues as well as many others for many years. So, welcome. Thank you for being with us. [LR103]

SENATOR SCHROCK: Thank you. [LR103]

SENATOR DUBAS: Questions from the committee? Senator Dierks. [LR103]

SENATOR DIERKS: Thank you, Senator Dubas. Charles, welcome to the committee. Could you give us...could you give the committee a little bit of your idea about the effectiveness of the weed law we have now in Nebraska? How the counties fulfill their obligations, how the funding goes for them, could you give us some idea about that? [LR103]

CHARLES BROOKS: Well, we, in the weed control end of this think that our weed law is very good for us. We are funded by the counties. There is some problems with counties maybe adequately funding their own weed control authorities yet because it's, you know, their discretion to how active a weed superintendent they choose to have. But generally, overall, we have really good support from the counties and have strong weed programs and very good noxious weed control. A lot of counties envy some of the tools that we have in there to make landowners control their noxious weeds. I might interject that when we considered putting phragmites on the noxious weed list, we had to take into consideration that we didn't throw a weed or a plant on to the noxious weed list that

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would create burdensome economic expenses to a county. Because as we've seen from some of the actions that we have on the treatment, they started out as very expensive. We was around \$187 an acre when we first brought in some helicopters to spray. And so in the previous time it was some hesitation about attacking this problem because we didn't have the means, the money, or the funding sources to assist counties, and the control of this. And it was obviously beyond the landowners means to do this by himself. I'm sorry, is there another part that I've...you wanted answered? [LR103]

SENATOR DIERKS: I just wondered what you felt about the funding mechanism and how...if the counties are adequately funded and if not, if there's some way we can address that? [LR103]

CHARLES BROOKS: Well, I'm sorry. We, on the counties funding that we, as superintendents, you know we think they're doing all right. It's the supervision of those county programs through the Department of Ag that we find the strength is probably from the level up above the counties in providing the oversight that counties will have a good county program. And how we could additionally fund counties from another area to improve their weed programs, I don't have any idea on or any suggestions on how that might occur. But we do think that the top level management for the state needs to be strong so that they can have adequate oversight of our county weed programs. [LR103]

SENATOR DIERKS: Thanks, Charles. [LR103]

SENATOR DUBAS: Senator Wallman. [LR103]

SENATOR WALLMAN: Thank you, Senator Dubas. Thanks for being here. The canal system as such you have, I think you do a pretty good job of keeping those clean, even though sometimes they can't use them. Who...are just the irrigated users paying for that in maintenance of the canals? [LR103]

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CHARLES BROOKS: I think...yes, on the irrigation canals it would be the irrigation districts that are maintaining their own canals. [LR103]

SENATOR WALLMAN: Is that an onerous tax or is it very low, or do you know? [LR103]

CHARLES BROOKS: I would have to defer to an irrigation district representative. [LR103]

SENATOR WALLMAN: That's okay, yeah. Thanks. [LR103]

SENATOR DUBAS: Senator Price. [LR103]

SENATOR PRICE: Thank you, Senator Dubas. Thank you, Charlie. Quick question. On the Riparian Task Force one thing was brought to my attention. Have we looked at what other states have done over time in this very same area to see what their results were so we can maybe use that as a baseline for our out years? [LR103]

CHARLES BROOKS: I don't think we have really brought in anybody from an out-of-state situation and looked at that possibility. I think we're one of the few states in the United States that allows the landowners to own the property, if I'm not incorrect. Most states own their own river or have control of their own river systems. And so ours is a little unique in that we still allow the landowners to own the property and the bed under the river but just actually take control of the stream. [LR103]

SENATOR PRICE: Okay. I was actually thinking more in line of, does anybody else in the whole nation have problems with invasive weeds and species in their streambeds and have they taken actions and that we could do a lessons learned from what their doing that we're not in a period of rediscovery or discovery. It's doing rediscovery or, you know, piggybacking off of somebody else's work, that's more of what I'm looking for.

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[LR103]

CHARLES BROOKS: Okay. Okay, and no, we have not brought in anybody from any other river systems of other states. [LR103]

SENATOR PRICE: Thank you. [LR103]

SENATOR DUBAS: Senator Christensen. [LR103]

SENATOR CHRISTENSEN: Thank you, Senator Dubas. Thank you, Charles. Don't you think it would be advantageous for us to look at other noxious weeds that are in other states but not here presently and get them on the list, so we don't get in a situation like phragmites comes in and expands and gets horrible before we even realize what it is? Because I think there are some known plants in other states. Could we get them on the list? Could they get...be identified, added to the noxious weed list so if they do come here we get them controlled before they're out of control? [LR103]

CHARLES BROOKS: Yes, we try to keep track of the weeds around us that have potential with what we call the watch list category of weeds. We have 16 weeds presently on the watch list that are not on our noxious weed list. And so we try to use the Nebraska Advisory Group to update that list and they are made up of components of many industry people and that. And so we try to watch those weeds through the watch list process in Nebraska. [LR103]

SENATOR CHRISTENSEN: So you're comfortable we're taking care of that problem so we won't have another phragmites takeover? [LR103]

CHARLES BROOKS: Well, I'm not exactly comfortable with the watch list problem and there is some internal discussion in the Nebraska Weed Control Association into moving to more different categories. Other states might have a category A, which is their

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noxious weed list. Absolutely have to have it controlled. B, a list where they're not controlled but maybe the seed is controlled, but with proper spraying at the right time but you know you're not going to get it controlled. And C, is kind of...they have more different categories than Nebraska has at this time for addressing those plants in that way. So, yeah, we are somewhat comfortable but not totally comfortable with the watch list type of action. [LR103]

SENATOR CHRISTENSEN: Thank you. [LR103]

SENATOR DUBAS: Senator Carlson. [LR103]

SENATOR CARLSON: Thank you, Senator Dubas. Charles, in a partial answer to Senator Price's question, I'm pretty proud of what you people have done. And am I wrong or right that a lot of states are looking at Nebraska as to what we've done versus us looking at them? That doesn't mean we can't learn something but is that what you found at the Weed Management conference this week? [LR103]

CHARLES BROOKS: Yes, that's exactly right, Senator Carlson. That's...we found that all the other...we just had a North American Weed Management conference in Kearney the last two days in which we had representation from 22 states and two provinces of Canada attend this conference from which we discussed those weeds that are outside our borders and that are problem areas for other states. And we give them the demonstration on the phragmites, the problem what we're looking at and what we've treated, and how we're doing it. And I had individuals from Kansas approach me and say, well, our phragmites is on some banks but it's a little bigger, heavier stem. And I asked them, I said, well, are you seeing that these stolon, these above ground root system that really increase the width and depth of the plant, I said, are you seeing those present on that plant? And they go, yes. And I said, well, you might really very seriously take a look at how invasive your general type of phragmites is because it appears that you have one that's very aggressive. And so they are looking to us on this particular

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phragmites issue. [LR103]

SENATOR CARLSON: Would you comment on...you had mentioned in the first year it was pretty expensive on the helicopter per acre? [LR103]

CHARLES BROOKS: Um-hum. [LR103]

SENATOR CARLSON: And what's it been recently? [LR103]

CHARLES BROOKS: Our latest bid this year for our spraying projects came in at \$85 an acre, a little less than \$85. [LR103]

SENATOR CARLSON: Instead of a hundred and...? [LR103]

CHARLES BROOKS: Eighty-seven. [LR103]

SENATOR CARLSON: One hundred eighty-seven. Why? [LR103]

CHARLES BROOKS: Competition and the reduction of the price of the chemical. Some of it's in the fuel prices that have kind of come back down, so they know more about the fuel prices when they're bidding. And they've...we've gotten the chemical companies to lower the cost of the product, and it's just, there's competition out there now. And we figure we gained \$94,000 in the bid that we received versus the bid that we thought we would receive and that money was put to just doing further acres on to the river. We thought maybe with our grant program we were still going to have a few gaps somewhere maybe between Grand Island and Columbus and with the money saved on the bid, we were able now to close those gaps and we should have the state sprayed from end to end. The end of the spraying season of frost doesn't get us first. [LR103]

SENATOR CARLSON: Good. Thank you. [LR103]

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SENATOR DUBAS: Senator Wightman. [LR103]

SENATOR WIGHTMAN: Thank you, Senator Dubas. Charles, when we originally started this two years ago, I think it was two years maybe two, yeah, we were looking at a couple of factors, I think. One, the water use of these particular...this vegetation, and two, the fact that it was building up sediment and impeding the flow, both of which were very important. Can you tell me on phragmites, does it use a lot of water? Does it use a lot of water and then that's evaporated into the air? [LR103]

CHARLES BROOKS: I do not have access to the...any information that I could just give you that would say phragmites has been using this much water. But there are ongoing studies right now, I think by Grand Island. There is for the university people, some studies that are ongoing on the absorption, transpiration rate on the phragmites. But I can't conclusively tell you on that end of it. [LR103]

SENATOR WIGHTMAN: But, it would be considerable wouldn't it in these big beds of phragmites? [LR103]

CHARLES BROOKS: Yes, it... [LR103]

SENATOR WIGHTMAN: But almost worse than that is the vegetation creating sedimentation and then actually blocking the river. That was really true over in the Republican, was it not? [LR103]

CHARLES BROOKS: Right. Right, it was. [LR103]

SENATOR WIGHTMAN: And I'm assuming it's also true in the Platte, but the Platte tends to scour and have a lot, more rapid flow most places I suppose, doesn't it? [LR103]

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CHARLES BROOKS: So, the surprising thing about the phragmites plant that we are not seeing, if we was to take a skid-steer loader or something and dig into the bank, it has an extensive rhizomatous root system and the root system, I've heard, almost consumes more than 50 percent of the mass of the plant. But that's the hidden danger of that plant that we really haven't expanded much on. But it has extensive underground rhizomatous roots which, of course, would contribute to their use and intake of water all the time to keep that plant alive. [LR103]

SENATOR WIGHTMAN: Thank you. [LR103]

SENATOR DUBAS: Senator Christensen. [LR103]

SENATOR CHRISTENSEN: Thank you, Senator Dubas. Charles, do we need to look at, before we turn this over to farmers taking care of (inaudible), the original 701 we limited it to 100 foot from the center of the stream and you get out beyond that, there's still the Russian olive, still the salt cedar, even areas there's probably phragmites. Do we have bad enough problems out there that need to be addressed before we force landowners? [LR103]

CHARLES BROOKS: Before we force them... [LR103]

SENATOR CHRISTENSEN: Before we force them to clean and maintain? How bad would it be, I guess, is what I'm asking? [LR103]

CHARLES BROOKS: Okay. There are areas out there that are still beyond the landowners control. We have what I call, just in the nick of time, the NRCS through some equip funding, has a CCPI program in which they are initiating in contracts with individual landowners to take care of their property, and in which they would be reimbursed amount of money. Maybe not the full cost but at least cost to help them get

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this done. We had a person testify at our latest Riparian Task Force meeting, Ann Smith, from over by Cozad, and she was already signed up for this program and already starting to implement it on her own. And so she had contracted a local guy in the area to come over with a land application type machine and touch up her phragmites that was off the main channel which we'd sprayed in the previous years. When he went over there to spray it he found out that she had a big, kind of a boggy slough more to the back. And it was going to take him hours and hours and be very expensive for him to control that. And so he started...or they started working in conjunction and Kent Aden from Central Power had already contracted a helicopter to do some work for them and that helicopter was coming through, and they got their heads together and they said, wow, this would sure be simpler if we could bring the helicopter in, do that marshy area, you could clean up some of that adjoining area that's maybe more in the sensitive area around trees and that, and have him do that. And so, this is an area that's off the main channel that we've already treated, but yet it was still beyond even the mechanical sprayers ability to adequately get in there and do that. So we just happened to be lucky that we have ongoing sprayer programs, and a helicopter can come in and get...and so we still have some hard areas before we can turn it over to the landowners. [LR103]

SENATOR CHRISTENSEN: Is there any limit on that CCPI in distance away from the ...? [LR103]

CHARLES BROOKS: There's no limit on that, it's on their property. Whatever their property would be and whatever their contract is with the NRCS. [LR103]

SENATOR CHRISTENSEN: Thank you. [LR103]

SENATOR DUBAS: Other questions? Senator Schilz. [LR103]

SENATOR SCHILZ: Thank you, Senator Dubas. Mr. Brooks, thank you for coming in today. I guess you said that you had over, oh, how many participants from 22 states that

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came in and as part of, was it noxious weed kind of thing, or was it just a weed controller's convention, or...? [LR103]

CHARLES BROOKS: Well, it's a, it's a, I guess, it would be noxious weed because it would be weed controllers from throughout the states. [LR103]

SENATOR SCHILZ: Right. Did you...did we set up any protocols to make sure they didn't bring any of their (inaudible) here, drop them off before they left? (Laughter) [LR103]

CHARLES BROOKS: So...but no, it was...and that's one avenue is where we want to maintain contact with all our adjoining states and listen to what weeds that they're having problems with so that we can learn to identify them when they hit our borders. And we had 251 registered participants and we had 200 on the tour that we took to show the phragmites infestations and what we've have done. And they were very impressed with, of course, the legislative funding from LB701 that give us the impetus to attack our own problem instead of looking to Washington for that aid. I feel very proud about the state of Nebraska. We're kind of a shining star with our attack of these problems on our river systems. [LR103]

SENATOR DUBAS: Other questions? Seeing none, thank you, Mr. Brooks. [LR103]

CHARLES BROOKS: Thank you, Senator Dubas. [LR103]

RUSSELL SHULTZ: (Exhibit 2) I'm Russell Shultz, R-u-s-s-e-l-l S-h-u-l-t-z. I'm the weed control superintendent, Lancaster County, and I'm speaking representing the Nebraska Weed Control Association. And the topic of my comments is the role of the Noxious Weed Program and long-term streambed vegetation management. And I think we need to understand a little bit about the Noxious Weed Program that by state law we are to address noxious weeds as designated by the Director of the Nebraska Department of

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Agriculture. There are three riparian noxious weeds in the Platte and the Republican Rivers: purple loosestrife, salt cedar, and phragmites. Now, I would say that they make up, those invasive species probably in the Platte River make up 70 or 80 percent of the invasion; in the Republican it's probably less than 50 percent. But in both cases, it's a significant portion of the invading vegetation. There's other vegetation such as willows, cottonwoods, and red cedar involved and those plants presently do not meet the definition of a noxious weed. So we have in the infestations invading the streams both noxious and nonnoxious weeds. The Noxious Weed Program can be very effective in controlling the noxious weeds in the system, but in order to meet this whole demand for things there needs to be companion programs to address the nonnoxious weeds and addressing the mechanical actions needed. But I guess the bottom line of that, in any case, the riparian landowners have to be a part of the solution. Basically the Noxious Weed Program, you know, is basically considered to be a regulatory program but in the truest sense, most of the work done in a Noxious Weed Program is voluntary. Over 95 percent of the people that are notified that they have noxious weeds on their property go ahead and control them. We only use the legal notice and a forced control on less than 5 percent of the cases. But the key thing there, if people have to be expected to do something, or they usually don't do it. And when you have a law that has the kicker in there if they don't do it, we have something we can go in and do it, makes the program that much more effective, even if we don't use it very much. Word of mouth really goes around pretty fast when you have to deal with somebody. And the fact is, they make you sound like you're really bad. (Laugh) They're kind of scared of us. But we really depend upon almost, you know, 98 percent of the people to comply without being forced. In order for the Noxious Weed Control Program to be effective, we need to have uniform delivery in all counties. And some points I want to make there. How do we get there? What we need to be doing as a part of our responsibility in these noxious weed control is we're supposed to be surveying for all noxious weeds in the county, notifying the landowners of the presence, and expect them to have an acceptable control plan. An acceptable control plan is not always that you control everything the first year. I mean if...just like what Charlie was talking about. The problem's gotten so big with the

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phragmites that an acceptable control program wouldn't be a one-year program. It would have had to been a multiyear plan. But the bottom line is, if a landowner has a noxious weed, they should be expected to have some kind of control plan, and you work with them on that control plan. Okay, how do we make this happen? Steps should be made to make this happen now to design a companion programs to go along with the Noxious Weed Program. The question was about phragmites. In other words if we find phragmites out there, we've got the program to deal with it and we should be dealing with it, and we should require an acceptable control plan. And that should be a control plan for phragmites no matter where it occurs, away from the stream or in the stream. And we got to do a lot better job of start immediately looking away from the stream. Okay, I'm saying that we need adequate funding of the state Noxious Weed Program because we have a pretty high turnover in weed control superintendents. We need them well trained, we need assistants for all the superintendents, and we need, as Charlie mentioned, the program oversight to make sure each county is operating like they're supposed to be. I'm suggesting something here and I sent out a brochure that in the County Engineer Program, county road program, there's an incentive put out by the state and they supplement the salary of the county road guy if he is, I don't know what it's called, but it has a certification as a road engineer or whatever it is. I'm saying that we should be...weed control is a mandated program to the county and there's no funds going directly to the county. And I think that we can improve the professionalism of all the counties if there was some kind of incentive, if it was...if a supplemental funding to the salary if they had a certification of professional invasive plant manager. And the North American Weed Management Association has had this kind of a program for probably about the last five years. Basically it requires them to pass a test, or have certain level of experience, and carry out continuing education in order to renew that after three years. But we need to strengthen at the state level and we need things to do to encourage the best people to run the county programs. So we need to restore the general fund support of the NDA Noxious Weed Control Act responsibilities, a regular budget appropriation to Noxious Weed and Invasive Species Assistance Fund. And getting at your question there, we need to look at the way we're classifying noxious

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weeds and we set up a system whereby we professionally evaluate the weeds that might be aggressive if they came here and get them on some kind of a list. Not just a watch list but on a noxious weed list and it's in this category that so if they do show up, we have the authority to react. Now we heard couple of things at the conference. In some states they have a quarantine for those. It's not just on the regular noxious weed, but if it's not in the state and if it shows up in the state, then we have authority to do something about it. Also they have a quarantine program on the other end like on, like Russian olive. It would be very difficult to make Russian olive a noxious weed when it's being used for a lot of beneficial uses. But if it was quarantined on the other end, basically it would stop the sale of Russian olive in the state. And so it wouldn't add to the problem. You know, that's...and those were some of the kind of things we heard. But that's my general comments. I'll take any questions. [LR103]

SENATOR DUBAS: Questions? Senator Wallman. [LR103]

SENATOR WALLMAN: Thank you, Senator Dubas. Yeah, thanks for coming here. Does any weed management look at bird food that's coming in? You know they claim to be a lot of that noxious weed stuff originally come from out of bird food. [LR103]

RUSSELL SHULTZ: I apologize. My hearing isn't the best. [LR103]

SENATOR WALLMAN: Oh, bird food. Has anybody checked into that. You know a person told me that bird food you buy in these stores, all kind of seeds, some of that is actually noxious weeds. [LR103]

RUSSELL SHULTZ: There's requirements for all that to be noxious weed free. And that's handled through the Department of Agriculture. And yeah, any seeds like that are to be measured and they don't allow any noxious weed seeds to be involved in it. [LR103]

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SENATOR WALLMAN: And this purple flower thing, is that a noxious weed in Iowa? Because I think I've seen that planted in a national park for water fowl. [LR103]

RUSSELL SHULTZ: Yeah, I don't want to be too derogatory about a neighboring state but just to be up-front about it, I don't know if it makes any difference if it's on a list or not because we've got problems, situations just across the river on purple loosestrife and phragmites on Iowa's side and they don't get taken care of. Now, some of our people along there are trying to deal with that problem, but they do not have an aggressive program at all. [LR103]

SENATOR WALLMAN: Thanks. [LR103]

SENATOR DUBAS: Senator Carlson. [LR103]

SENATOR CARLSON: Senator Dubas. Russ, thanks for all the work that you've done since we started the Task Force. You've been very, very helpful. In your comments here, you mentioned new training of weed control superintendent. Touch a little bit on what's involved in the training of a new superintendent. [LR103]

RUSSELL SHULTZ: Well, we have...one thing, we have a one thing in our Noxious Weed Control Act that's very good. It requires that each one, superintendent has to have a minimum of ten hours continued education a year. We have, we offer 20 hours of continued education so all of them are required to have ten hours and they can get 20 hours. But the new weed control superintendents need to be, spend time with these state inspectors. They need to walk them through things. They need additional training. They need on the ground training, what step to take, what if you run into this situation. So they need a lot more hands-on type training to get them... [LR103]

SENATOR CARLSON: What kind of training would they need before they ever went and applied for the job? [LR103]

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RUSSELL SHULTZ: Well, the only requirement is they have to be certified herbicide applicator. That's the only requirement unless the county itself...now, Lancaster County there's, well that is not statewide, but it requires them to have a college degree in some kind of area that would be... [LR103]

SENATOR CARLSON: Lancaster does? Lancaster requires a college degree? [LR103]

RUSSELL SHULTZ: Yeah, uh-hum. [LR103]

SENATOR CARLSON: Okay. [LR103]

RUSSELL SHULTZ: So I mean the county can require some additional things but on a statewide basis the only thing is they have to be a certified applicator. [LR103]

SENATOR CARLSON: Okay. Thank you. [LR103]

SENATOR DUBAS: Other questions? Senator Hansen. [LR103]

SENATOR HANSEN: Thank you, Senator Dubas. Russ, I think you need to touch a little bit on the Task Force that you are leading up on the Riparian Task Force, but I mean the subcommittee of streambed ownership and why that is difficult? I think the more I learn the more difficult it seems. I think what you've been saying for the last two years is true, but I didn't realize how difficult that was to actually identify who owns the streambed. And to that point, if you're going to go out and spray or a county weed board is going to go out and spray, they have to be able to get that billed to the right person. Could you touch on some of that streambed ownership problems? [LR103]

RUSSELL SHULTZ: Yeah, Nebraska is only one of five states where the riparian landowner owns the streambed. Our law basically is a British common law because

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Nebraska and these other four states never did pass a state law providing for some different type of ownership. So we revert back to the British common law and it basically provides access to the low point of the water on each side, calling a riparian water right. And so that thread of the stream or low point in the stream moves then the ownership changes. As the register of deeds has responsibilities by state law to determine ownership for the purposes of taxation and that's why it was...Charlie mentioned the fact that it would be desirable if state law said the register of deeds is to maintain ownership records not only for taxation purposes but for other state mandated programs. Also in our survey, one of the...we're going to have some questions on that. We make the assumption what landowners want or what they think and we're going to ask them the question, do you feel it desirable to have a permanent line between you and your neighbor on the other bank. Secondly, if you think so, do you think there ought to be legislation that would require a line down the center that would become the permanent boundary. Or thirdly, would you like to have examples of agreements that you could enter into with your neighbor in order to create that permanent line. That permanent line is really...makes it difficult. We need a permanent line and I don't know...I think it would be very interesting. We're going to be sending out probably 5,000, I don't know, 3,000 to 5,000. All the owners on the Republican and all the owners on the Platte River will be asked that question and by December, hopefully, we will get a response back and get the landowners feeling for that. So I think if they come pretty high on it, 50 percent or higher, maybe you as legislators may feel comfortable and maybe addressing that question. [LR103]

SENATOR HANSEN: Thank you. [LR103]

SENATOR DUBAS: Senator Carlson. [LR103]

SENATOR CARLSON: One more question. Thank you, Senator Dubas. A state that has permanent boundary lines in the streambed, then when the stream moves and so you and I were across from one another, and we got a stream between us now and that's

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okay, and then it's a permanent line and then through the course of high water or whatever, it moves over to your way, and off my line. Now for the most part I want that property because I've got access to the river. I don't want to be denied access to the river. [LR103]

RUSSELL SHULTZ: Yeah, and that's a very good question and that's one of the questions we'll ask in the questionnaire. Is it important to you that you always have access to the low point? And I don't if this is even feasible if the law could say the center of the line, but neighbors always have access to the low point. [LR103]

SENATOR DUBAS: Senator Price. [LR103]

SENATOR PRICE: Senator Dubas, thank you. We actually had that in our hearing in our Government Committee because there are counties now that are using GPS marking to mark the center of the channel today so that whenever that happens they've already got the boundary determined, but the landowner still always maintains access to that water. It's just like the accretion issue you'll have sometimes. So that's already been dealt with, with other legislation and other questions in that very case as we see more and more people moving to GPS marking for determining boundaries. [LR103]

SENATOR DUBAS: I would have a question for you, Mr. Shultz. You mentioned in how do we make this happen, you talk about General Fund support for the Noxious Weed Control Act and some regular budget appropriation. And I didn't know much about weeds other than I had to go out and dig musk thistles out of the pasture before I was on this committee. And then since being on this committee and in the Legislature I've learned so much about how important the role of our weed control authority is in the state of Nebraska. And I think it's one of our best kept secrets. And you really do contribute substantially to farmers' and ranchers' ability to do their, you know, maintain their properties and preserve our very narrow profit margin. And I have also learned, and correct me if I'm wrong in this, whenever we're looking for money in budget short

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years we've always tended to go to the weed budget and say they don't need it. And we've tended to rob from you and not replace it. [LR103]

RUSSELL SHULTZ: That's nothing new and that's done at the county level. You start with the smallest program and make a cut there and think you're going to save yourself. I don't think it works that way, but that's what happens. [LR103]

SENATOR DUBAS: So I think it would behoove all of us to really educate everybody about just how important your work is to the economic vitality to our state. And it's really came home to me over the course of the last two years that you guys do do an awesome job. I've learned a lot about just how important your work is, and we really shouldn't be cutting your funding. We really should be giving you more, but that's easier said than done. [LR103]

RUSSELL SHULTZ: Thank you. You know, a lot of these counties operate with just one person. And, you know, it's amazing what they get done. [LR103]

SENATOR DUBAS: Senator Dierks. [LR103]

SENATOR DIERKS: Thank you, Annette. Thanks for being here, Russ. I have to just...I've made this statement before concerning this LB701 Task Force that I've been on with all of you gentlemen. I've been on a lot of task forces in my 20-some years in the Legislature, never been on one as successful as this one has been; never been on one as interesting and that answered the questions that we thought we needed to have answered. And I think that I have to thank not only Senator Carlson, but you, Russ, and Charlie for the work that you do. I serve on the Streambed Ownership Subcommittee with Mr. Shultz, and I have one thing I'd like you to define for us, Russ, a new word that I learned, but I think you ought to tell the committee what that is. Maybe they already know it, but what is the cadastral line? [LR103]

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RUSSELL SHULTZ: Cadastral? Cadastral refers to the term the register of deeds uses. Cadastral map is actually a map showing the ownership lines but it is also information related to the ownership of that delineated area. So when they say cadastral information, it's not only...it's the map with the ownership lines but who owns it, what the value is, and all the other information that goes with that parcel. [LR103]

SENATOR DIERKS: Thank you. [LR103]

SENATOR DUBAS: Other questions? Seeing none, thank you again, Mr. Shultz. [LR103]

RUSSELL SHULTZ: Thank you very much. [LR103]

SENATOR DUBAS: Next testifier. Any other testimony? Senator Carlson, would you like to make closing remarks? [LR103]

SENATOR CARLSON: Thank you, Senator Dubas. And I appreciate those that have come this afternoon. Even if they didn't testify, they've got a definite interest in this area and certainly appreciate the support that we've gotten in this work. And so we do need to...we need to move forward and figure out what a reasonable maintenance plan is to maintain what we've done. And then secondly tweak that law if necessary so that we keep the responsibility with the riparian landowner but we don't eliminate the possibility of help all the way from 10 percent or whatever to 100 percent. And so I think this has been a good session and thank you for your input. [LR103]

SENATOR DUBAS: (Exhibit 3) Thank you, Senator Carlson. We also have received some written testimony from John Thorburn, manager of the Tri-Basin NRD. We'd like that entered into the record. And with that... [LR103]

_____: I think Senator Carlson might have...do you have... [LR103]

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SENATOR DUBAS: Oh. Do you have something to read into the record too, a letter?
[LR103]

SENATOR CARLSON: (Exhibit 4) Yes, I have a letter from Kahrs Farms, Inc., from Franklin, Nebraska, concerning this hearing to be read into the record. [LR103]

SENATOR DUBAS: With that, that closes our hearing and I will turn the reins back over to our Chair. [LR103]

SENATOR CARLSON: Thank you, Senator Dubas. And we'll...even though it's 2:36, we're a little bit ahead of ourselves, we'll move on to LR104, a study to examine mechanisms to mitigate marketing risks to producers and other grain market participants beyond those available under the Grain Dealer Act and the Grain Warehouse Act. And Rick Leonard, as research analyst for the committee, will present the resolution. [LR104]

RICK LEONARD: (Exhibit 1) Thank you, Chairman Carlson and members of the Legislature or members of the committee and guest members of the Legislature attending today. LR104 is an interim study, as Senator Carlson mentioned, examine what are the existing protections we have for the producers in securing grain transactions and securing the integrity of participants in the grain industry and to examine also technically the idea of the potential of feasibility and desirability of the potential of establishing an indemnity fund. An indemnity fund is essentially an insurance fund. It, again, my name is Rick Leonard, research analyst with Senator Carlson. [LR104]

SENATOR CARLSON: Spell it, would you please. [LR104]

RICK LEONARD: L-e-o-n-a-r-d. (Laughter) And I will fill out a testifier sheet at the

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conclusion. But anyway, an indemnity fund is a concept that actually there are 14 other states have the concept in place. And essentially an indemnity fund is a producer-funded, in most cases producer-funded, self-insurance program whereby producers contribute upon transaction to a fund that is publicly managed. And the fund and any interest gained accrues over time is available to pay out claims in the event of a failed grain institution. I've sent out items in advance. I sent out a fairly good table put together by the American Association of Warehouse Control Officials that kind of examines the different state indemnity programs by a number of...about a dozen different elements: what kinds of transactions are covered; what the assessment cost is; how the funds are covered. I've handed...I'm going to let...Jerry Vap is here and he said that he wanted to...I'll defer to him to talk about the existing grain warehouse laws and the bonding protection and what types of actions or what types of producer interests are protected as well as the licensing requirements and the inspection and oversight that the Public Service Commission does. I wanted to draw your attention to some handouts that I did hand out. I tried to gather some information. The first table is a summary of losses that have occurred through warehouse or through various dealer and warehouse business failures since 1993...particular and most recently the Alvo Grain and Feed. As you can see that we...beginning after if you'll see...beginning with Wilhelm Grain, we made some changes in the law following the Atlanta...failure of the Atlanta Elevator here nearby in this area. It became apparent after that failure of that elevator that some of the protections we were offering under the Warehouse Act potentially weren't keeping up with some of the changes in the grain industry in the manner that grain was marketed and that potentially some of the risks that had potentially been introduced into the marketplace. We made some significant changes to the Warehouse Act with passage of LB735 in 2003 in part responding to our experience of the Atlanta Grain Elevator failure. In that particular case, we were finding there was an increasing use of direct delivery grain and then also increasing use of different types of pricing and marketing options for producers, particularly using forward pricing, direct deferred payment, deferred price transactions, which we're finding that these types of transactions were not covered under the existing protections. LB735 required extended the requirement to be licensed

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as a grain dealer to elevators when they were dealing in those types of transactions. The following year LB439 we put in place the procedures today that...for when a...to accommodate a person who wanted to deliver grain or wanted to tender some grain for storage yet wanted to achieve the efficiencies of a direct deliver to a third party. We created LB439, tried to set the rules and procedures and for that producer delivering that grain to a third-party location, acquiring a storage position in the warehouse. And then LB492 was in 2005 as well. We, I believe we reinforced what was existing policy that owners and storers of grain had a first and superior priority in any grain that was in the inventory of the warehouse at the time that the PSC might take licensure action anyway. One of the questions I guess that part of the impetus for this interim study was the Public Service Commission had issued an investigative docket, basically more of a study type of procedure whereby they took also started down the path of looking at do...is there interest in an indemnity fund considering changes in the grain industry that are occurring and the potential deficiencies of the existing protections we have in the Nebraska law. And some of those...some have cited that some of the significant things: growth in local markets versus traditional markets, we're seeing a lot of proliferation both in I think in some of the size of the feeding operations as well as the processing industry, most notably the ethanol industry, and local marketing where at one time probably most of our grain, much of our grain was exported out of the market and they access those markets through licensed entities like warehouses. Today there's much more local proliferation of local markets. Some of those players in the markets are not licensed entities. The growth in the size of warehouses that we have a maximum bond protection of \$500,000 in place that as the industry has evolved and we've seen consolidation and growth in elevators, that maximum bond protection may not have taken place. And I know Jerry will talk about that a little bit more. And again, some of the types of transactions, especially the direct delivery and the forward pricing mechanisms are not currently covered. And we're seeing a larger percentage when an elevator fails those types of things. There's also been I think the Alvo case at the time we introduced this there were two events that were taking place and that was the bankruptcy of the VeraSun plant as well as the Alvo Grain and Feed. And both of those...part of the

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impetus for this interim study was the potential of those two things: were they indicative or symptomatic of maybe some changes that maybe there was new volatility in the grain markets that were affecting the underlying soundness of the businesses? As you know, the ethanol companies have gone through a period of financial stress. Some of that is transferred to the elevators and the grain dealers that have been supplying them as well as additionally at the national level. We've seen a lot more speculative activity, a lot of different players in the market that there's a lot of concern that there was a lot more volatility in the markets. And when you have that kind of price volatility, it has a chance to come back and affect our grain dealers and our elevators in the fact that they quickly need capital for margin calls. There was concern about the ability of was the market truly being able to serve as a risk hedge as its traditional function as well as some of the price convergence, difficulty in price convergence we saw late last year. But thus far, we've not seen Alvo situation was dealt with and I think the industry has probably returned to a lot more stability I think in the last...since in the last half...since the first part of this year. So that was the purpose to look at that. There's some interesting...there was one last thing I just wanted to point out to you. Part of the...one of the issues that comes up is should ethanol plants or some of the entities that we have not, that aren't grain dealers, this first chart here tries to give some information about what percentage of our grain using the corn checkoff as an indicator that what percentage of our grain is being direct marketed to nonlicensed entities. The blue parts of those graphs will be your licensed elevators and licensed grain dealers. And you can see that, yes, there has been some growth in the first marketing to some nonlicensed entities and that gives you an idea. Even though today that ethanol is using about 30 percent of our crop, the ethanol is the first purchaser only about 7 percent of the time of all the checkoff collections, which is an indication that some of our grain that does end up in ethanol plants is first being marketed through elevators. Some of the ethanol plants do license...have voluntarily licensed and sometimes the ethanol plants procure through...set up a grain dealer subsidiary and they do become licensed by the Public Service Commission and procure a lot of their grain through their grain dealer subsidiary. So even though ethanol plants are using about 30 percent of the crop, 30,

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31 percent of the crop, they're probably only directly buying about 7 percent of the crop or at least 7 percent of the grain that is marketed so. If I can answer any questions, I'll try to. [LR104]

SENATOR CARLSON: Okay. Thank you, Rick. Questions? Norm. [LR104]

SENATOR WALLMAN: Thank you, Senator Carlson. Yeah, Rick, thank you for coming up here and explaining this a little bit. But as far as bonding for elevators, you know, in our state, do we have a separate fund for that? And how much is in there roughly, do you know? [LR104]

RICK LEONARD: No, we don't. We require as a license requirement elevators are required to maintain a certain amount of security. There's a formula based on so much per storage capacity up to a maximum of \$500,000. So we don't have a separate fund today, but each elevator has to have a security, typically a bond, that is payable to the PSC at the time the elevator fails. [LR104]

SENATOR WALLMAN: Thank you. [LR104]

SENATOR CARLSON: Any other questions? You made a comment and maybe most of them here understand it, but to clarify where you have grain delivered to third parties, so you have a producer that's got corn and he would normally have taken it to the co-op, but the co-op told him to take it to the feedlot. But he gets a receipt as though he took it to the co-op. [LR104]

RICK LEONARD: Not exactly. There were situations when we saw that the industry was using direct delivery and that was becoming much more common, there's a lot more efficiency where you're handling the grain less stop and potentially we can get grain on the market. There were a lot of reasons why we did that. But essentially what...can you ask the question again. [LR104]

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SENATOR CARLSON: Well, I think I know why they do it. If it's my corn and I want to take it...I want to feed it through... [LR104]

RICK LEONARD: Right. [LR104]

SENATOR CARLSON: But if I take it to the elevator first, I feel like that's a little safer. And they in turn sell the corn, but they tell me, well, don't bring it here. Just bring it to the feedlot. But I get a warehouse receipt as though I did take it to the elevator. [LR104]

RICK LEONARD: We've provided for two things. One, we provided for a direct delivery ticket and, number two, we've provided for an in-house, in-store transfer document to verify as the instrument for saying if I...this was only in the case where I'm going to tender corn for storage. I go to the elevator. I want to bring my corn in. I don't want to sell it. I want to store it in the elevator. The elevator says, well, you know, we would like you to deliver your corn over there. We'll exchange the corn. You will go over there with some grain we own that's here in the elevator. So you don't have to haul it in, unload it, then load it onto another truck and haul it over here. Makes often a lot of sense to move it over here. We provided the system for documenting and verifying that that exchange and substitution has taken place to provide you...when you deliver, there's a direct delivery ticket that we've provided for with I believe LB439 as well as the in-store transfer document. That becomes prima facie evidence of my storage position in the warehouse. [LR104]

SENATOR CARLSON: Okay, good, thank you. Any other questions? Okay, thank you for your testimony. Go ahead, Jerry. [LR104]

JERRY VAP: (Exhibit 2) Good afternoon, members of the committee, Senator Carlson. My name is Jerry Vap. I'm the vice chairman of the Nebraska Public Service Commission. I represent 51 counties west of Grand Island on the commission. And I'd

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like to give you a little background on what happens or what the grain dealer and grain warehouse laws entail today. Grain warehouses, the commission has about 94 of them under license today; but we have over 330 locations with those 94 warehouses. As Rick said, the maximum bond is \$500,000. It's based on 20 cents a bushel on the storage capacity of the warehouse up to \$500,000. That is not on each location of that warehouse. It's on the entire operation. So if that...if you have a one-location grain warehouse that has a half a million bushel storage, they're going to have about a \$100,000 bond. If you have one that's got 30 locations with 10 million or 20 million bushels of storage, they're going to have a \$500,000 bond total to cover the entire operation. Every one of them is required to be a grain dealer. Grain dealers have a maximum bond of \$300,000, and that bond is based on 7 percent of their dollar volume of grain for the year. So many of them may not have a \$300,000 bond if they're not doing a high volume of business. Anyone who sells grain to a grain dealer, whether they take it to a third party or deliver it right to the warehouse and sell it, is covered under that \$300,000 bond based on that contract that they have signed. They have 30 days from the last delivery on that contract, for example, Senator Carlson sells 10,000 bushels of corn on a contract and he's delivering it 1,000 bushels at a time. When he dumped that last 1,000 bushels on the contract, he's got 30 days to ask for his money to be covered under the bond. If he goes 31 days and has not asked for his money, he's an unsecured creditor of that particular dealer he's doing business with. If that dealer fails on the 32nd day, he has no coverage under the bond. You have to get in line in the bankruptcy court with everybody else. Now two ways that a third-party delivery can be handled, as Rick said. You take it at the direction of the person you're doing business with to a third party and you dump it there. You may get a weigh ticket which says that you dumped x amount of bushels of grain there. If you said I wanted to store that grain like Senator Carlson wanted to do, then you have to execute an in-store transfer document signed by both the warehouseman who states that they now have a storage position that was taken out of company-owned grain. So the company has got to have enough grain to cover whatever he wants to do and then you both sign that and that's proof of ownership of grain in the warehouse. Typically when we have an elevator

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failure, a majority of the times the warehouse grain is covered very well. It's the dealer side where people don't ask for their money or they have a price later contract or they have a different type of a payment program, they don't ask for their money in 30 days, they're out of luck on the bond. A \$300,000 bond doesn't go very far. In the Alvo Elevator situation that Rick described, there were over...I think there were around \$3 million worth of dealer contracts that filed claims with the commission. Of the claims that were found to be valid, 12.5 percent on the dollar is what they got. That's not a very good return, and that came all from the \$300,000 bond. There was no money there for the grain dealer activity. Several people had claims of upwards of \$400,000 to \$600,000 on dealer activity that had no coverage of any kind. They're in line at the bankruptcy court right now. And we have no idea. On the warehouse side, we did not have to claim any of the bond in the Alvo situation. We actually had slightly over a million dollars in excess grain in the warehouse. We were able...we're writing checks next week to all of the warehouse recipients because there were some appeals of our orders. But we now have finally got orders from the bankruptcy court that we can write checks. And everyone who had grain stored in there and can prove it is going to get 100 percent of their money, and we'll provide another million-plus to the bankruptcy court to satisfy these other claims. The bank itself has about \$3.4 million in claims themselves against the bankruptcy. So even though there's quite a bit of money there, those grain dealer customers still may not get a whole lot of money out of the bankruptcy. Interesting thing about the Alvo case is that, to me anyway, we'd had them on a watch because they had done some pretty sloppy recordkeeping. Their daily position was out of line several times when we inspected them so we put them on a watch and told them that that was going to change or else. In July of '07, we did a full-blown audit on the company and everything matched. Everything was just the way it was supposed to be. In November of '07, we went in and measured the warehouse and every bushel of grain that was on the books as being stored there was there. It was everything was right. The bankers testified at our claims hearing that on January 1 of '08 the warehouse company owed them no money. They were completely free and clear. Less than three months later, they owed them \$3.4 million and were in bankruptcy. It can happen that fast in the grain

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business these days. And this, of course, was at the time when wheat was over \$10 and soybeans were \$14, corn was up to \$7 and there was a lot of volatility. Many of the elevator operators have told me that they were some of the big co-ops were on a daily margin call were dealing in millions of dollars of margin calls. And we're really fortunate in Nebraska that we didn't have more failures than just this one at that time. It shows that we do have some real strong elevators there. But all that is great if you're not one of those losers. And we had even before the elevator or the Alvo situation came about, the commission or members of the commission discussed the possibility of looking at an indemnity fund. We had, when Rick and I and Senator Kremer worked on that original legislation after the Atlanta Elevator over here...by the way, I was on the commission six months when that thing hit so I got a real baptism of fire in handling an elevator failure. But we asked the bonding companies to come in and tell us what do they do and what will they do as far as bonding is concerned. And they basically said you can pass a law that sets that bond wherever you want to. We will write no more than what's already in law now; \$500,000 is the maximum we're going to write. We haven't gone back and asked them recently, but it would be my understanding that given the failure of the ethanol industry, they're not going to write bonds on that. We do have some ethanol plants that voluntarily are grain dealers. They have a \$300,000 bond. Research shows that that bond will cover less than one day's grind for an ethanol plant. So that's not very effective either, especially if you're dealing in a 30-day time period, not much there so. We did hold some meetings. The idea was talked about for better than a year amongst the commodity groups and farm organizations. I held another meeting this past year, I think it was back in...during the session it was on I think at the time we held that, and we got very cool reception for any further thoughts about it from the commodity organizations and the farm organizations. So the commission right now is on a wait-and-see basis. We're not going to introduce any more meetings necessarily. We've kind of handed the ball off to Senator Carlson to see if any other new ideas may come up. And I think he has one that is worth taking a look at so. I'd answer any questions that I... [LR104]

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SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Yes, Senator Dierks. [LR104]

SENATOR DIERKS: Thank you, Senator Carlson. Jerry, in the Alvo case, you said the banks had how much loaned on it? [LR104]

JERRY VAP: It was around \$3.4 million. [LR104]

SENATOR DIERKS: So when the people come by with the money to pay off the bond, how many of those dollars go to the bank? [LR104]

JERRY VAP: That's going to be determined by the bankruptcy court. [LR104]

SENATOR DIERKS: They don't necessarily have first lien rights but... [LR104]

JERRY VAP: Well, the bank thought they did. We determined that anyone that owned grain in the warehouse and could prove it would have first priority on any money. And the state statute also says that. The bank claimed that under common law they had first call on the money and we said, no, you don't. That similar situation happened with the Atlanta Elevator. A company thought they should have first claim on it, on the bond money and anything else and the warehouse receipts. And the Supreme Court, after they appealed our order, we said, no, the Supreme Court said the Public Service Commission got it right. You don't get any money. The bank in the Alvo case had appealed our order that they don't get money, and then they've come back and withdrawn that appeal based on the fact that there's over a million dollars more grain in the warehouse than what we needed to pay the patrons and the other assets they had under lien. So they think maybe they're going to come out better in the bankruptcy than they might with the Supreme Court. [LR104]

SENATOR DIERKS: Did you say the bonding company has said that they won't insure

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for more than \$300,000? Is that... [LR104]

JERRY VAP: That was \$500,000 was the maximum on grain elevators. [LR104]

SENATOR DIERKS: Okay, and what's it cost? What does it cost the people to take out those bonds? What's the price? What are they paying for those bonds? [LR104]

JERRY VAP: It's hard to tell. I don't know really, Senator. Sometimes it may depend on the record of the entity that wants the bond. Some may have to pay a higher price for it than others. [LR104]

SENATOR DIERKS: But there is a fee charged. [LR104]

JERRY VAP: Oh, yeah. [LR104]

SENATOR DIERKS: Why wouldn't they be interesting in upping the amount and getting more fee? [LR104]

JERRY VAP: They don't want the risk. They'll accept a certain amount of risk, but when they, for example, when they look at the ethanol plants and they see the risk there, they're not going to take it. They just plain aren't going to write it. And right now we understand there's maybe no more than three companies in the entire country that will write a bond on a grain elevator. [LR104]

SENATOR DIERKS: Is that right? [LR104]

JERRY VAP: It's very limited. [LR104]

SENATOR DIERKS: Thank you, Jerry. [LR104]

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JERRY VAP: Um-hum. [LR104]

SENATOR CARLSON: Okay. Senator Wallman. [LR104]

SENATOR WALLMAN: And just like (inaudible) incident, you know, with delayed pricing, delayed delivery. Say I have grain in my bin and I still had to deliver that, was that right? [LR104]

JERRY VAP: You signed a contract to sell it. [LR104]

SENATOR WALLMAN: Yeah, just say July. [LR104]

JERRY VAP: And you're going to deliver it on a given day in the future, generally it's interpreted that when you sign the sales contract you transferred title to that grain to whomever you sold it to. All you're doing is warehousing it for them until you deliver it. [LR104]

SENATOR WALLMAN: And I notice Illinois has a program here. Has that been looked at by the commission or not? [LR104]

JERRY VAP: We looked at it. Illinois has had their program go broke twice with claims, and the state of Illinois had to come up with some money to help put it back together. Our idea was that it would never fall on the state of Nebraska to guarantee any of this, that it would strictly be a producer supported program or fund. And if you look at those 14 states there, not any of them are identical. Indiana is strictly an insurance program and it's an opt-out program. Everybody is in until they opt out. And then they've got to wait a certain amount of time before they can ever get back in again. And I think the way they have to do it if they want back in, they have to pay everything back that they took out. [LR104]

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SENATOR WALLMAN: It's interesting how some of them put a cap on it, isn't it?
[LR104]

JERRY VAP: Um-hum. Well, how far do you want to go to reward risky behavior?
[LR104]

SENATOR WALLMAN: Yeah. That's what I meant, yeah. [LR104]

JERRY VAP: Yeah. If you're going to pay 100 percent, there's no percentage in taking responsibility for your own actions. So you've got a...there's got to be a balance I think. If you're going to go through with anything like this, there's got to be a balance. [LR104]

SENATOR CARLSON: Okay. Any other questions? I want to make a comment for the people in the audience that may still testify because as I look at it, there are four groups involved in this whole process. You have the dealers who buy and sell grain; you have the warehouses and storage people who store grain; you have the feeders who feed grain; and you have the producer that grows the grain. Now thus far in our discussions, nobody is very interested. And I guess if we're talking about the possibility of a plan that's voluntary that acts like an insurance policy, like a hail insurance policy, you can buy it or you don't have to buy it. I'm not sure why there isn't more interest in it. So I'm saying that so as some of you come up to testify and you have some thoughts in that direction, let it be known to the committee. Thank you. [LR104]

JERRY VAP: I don't have any written testimony to present. We'll do that at your hearing on the 2nd in Lincoln from the commission anyway. Thank you. [LR104]

SENATOR CARLSON: Okay, thank you. Okay. Next testifier. Bob, you got a green sheet. [LR104]

BOB DAHLGREN: (Exhibit 3) I'm the only other one to testify? Last in time, first in line

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or second in line. Well, you didn't include us in your list, Tom. I'm Bob Dahlgren with the Bank of Bertrand. We also have an interest in this. [LR104]

SENATOR CARLSON: And spell it, would you. [LR104]

BOB DAHLGREN: D-a-h-l-g-r-e-n. It's on the bottom of the page for those in question. [LR104]

SENATOR CARLSON: Good, but the "transcriber" can't read. [LR104]

BOB DAHLGREN: Historically, elevators, producers, nobody has been in favor of this, not even the bankers. But what I would propose would be somewhat like the FDIC insurance that us bankers are familiar with. And the bankers pay the whole bill on the FDIC insurance. So under my proposal, if I were to have the deposit or insurance...grain insurance fund, I would have the grain elevators pay in, but they're not going to be in favor of it so it's going to be a battle. I'm not familiar with your plan. I don't know how your plan works, Tom. Does it...is there somebody out there writing it now? []

SENATOR CARLSON: No, not necessarily. My plan is a concept after spending 30 years in the insurance business and knowing something about insuring against risk. And so I just think it's an idea that's worth talking about. And the concept of insurance you have a choice. You either buy it or you don't buy it. Pay the premium and you're covered. Don't pay the premium and you're not covered. [LR104]

BOB DAHLGREN: Well, the FDIC is considered insurance, you know. We consider that insurance and we pay that...us bankers pay that premium although... [LR104]

SENATOR CARLSON: Then you charge us for it in interest rates. [LR104]

BOB DAHLGREN: And you charge us...we may charge you for it or we may take it out

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of earnings, depends upon where the earnings come from. (Laughter) My second page describes the grain insurance fund. And even though Illinois has been down the tubes, I think it's the best model. They're current model, they're using grain elevators, they're using producers, and the banks that are asking for warehouse receipts are also paying premiums into it. So it's also in this as you go down through there. And this is risky business and there's a lot of money at stake out there. And if the producer don't get paid, the banks don't get paid. So then we're losers on top of it. If we can't...if we have to take out the borrower because he can't pay his loan because he didn't get paid, then we're at risk also. And that happened to us at Atlanta. We had one that eventually did not fare so well. And I was over the years somewhat...I advised several clients to be careful selling at Atlanta and some of them ignored that. But the owners of Atlanta came up to see me one day and said they had heard that I was not recommending farmers sell there and so they were concerned about what I was saying. So it also...the word flows back. And so they were concerned that I was recommending they sell somewhere else. So in the end I was right but I was so wrong because it still went down. As you see as you go down through here, you go down to about the fourth from last page, Canada has a nationwide plan called The Canadian Grain Act. And this is really what we're talking about. At the top of the page, "How to manage the risk of not being paid" and that's what this is about. And currently the local elevators, if you turn back to page...where it says AGRI Co-op on top, Attention: Bob Dahlgren and it says at the top. The middle of that page it says, this is a soybean contract dated August 16 of this year. In the middle of the page it says, "Title and ownership will transfer at time of delivery." So you sign this thing, you give up title and ownership even if you don't get paid. That's the way they're doing it right now. If you want to sell your soybeans and not collect right away, you're signing this and giving up. I would highly recommend that we figure out some way, either under your plan or to make a grain insurance fund and model it somewhat after Illinois, even though Illinois has been down the tubes. They had somebody take \$40 million bankruptcy hit on it and it just wiped \$20 million out of that fund overnight and that's what caused. Questions? [LR104]

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SENATOR CARLSON: Okay. Thank you, Bob. Questions? Yes, Senator Utter. [LR104]

SENATOR UTTER: Bob, the FDIC insurance fund is not exactly voluntary. It's pretty much a mandatory thing. It's a mandate on the banks. [LR104]

BOB DAHLGREN: It is. [LR104]

SENATOR UTTER: And even though the banks own that fund, the losses are paid out of it and the premiums rise and fall. And right at the moment they're in a rising mode, God only knows how far they're going to rise. I'm not sure how a voluntary type thing would work because it seems to me like to make it work you've got to have substantial involvement of the parties that are...or the fund never builds to enough to satisfy some catastrophic loss of some kind unless there's a form of reinsurance or something along that line. [LR104]

BOB DAHLGREN: I think Senator Carlson used the word voluntary. I never did use the word voluntary. [LR104]

SENATOR UTTER: No, I understand that but I'm just pointing that out. And regardless of who pays it, it seems to me like it eventually it's either going to be the farmers are going to pay it because it's going to reflect in the prices they're going to get for their grain. And the banks, as far as I'm concerned, the depositors pay the FDIC insurance fund because ultimately it reflects in the amount of interest that banks can pay on those deposits. And so somehow or another it seems to me like it has to become something that the farmers really want to do and really think that it's necessary. And it seems to me like the greatest risk may not be the grain elevators but it may be the other folks who are buying grain from farmers on delayed payment type concerns. It's the ethanol plants, it the feedyards, it's those type of people. And if you're going to do this thing right, do you think...don't you think they all have to be kind of covered regardless of where the grain is sold? [LR104]

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BOB DAHLGREN: It would be nice, but it's going to be a job to get them all in. [LR104]

SENATOR CARLSON: Now to respond a little bit to Senator Utter, if there was such a concept as voluntary that could work, and around this table we all produce corn, take it to the elevator, but you and I are the only ones that buy the insurance and they go down, it's two of us to pay, not everybody around the table. [LR104]

SENATOR UTTER: That's true. [LR104]

SENATOR CARLSON: And if the concept can work on hail insurance, you know, I may be pretty naive, but why couldn't it possibly work if a company was smart enough to figure out how to price it? []

BOB DAHLGREN: I'd...if they're not willing to write the bonds, I'm guessing they're not going to want to write it. But I just don't know. If the premium is high enough, they will. [LR104]

SENATOR CARLSON: Yeah. Then nobody will buy it so. [LR104]

BOB DAHLGREN: It depends on how much they put in the fine print. (Laughter)
[LR104]

SENATOR UTTER: Of course, with the FDIC insurance. One other thing we haven't talked about and that's the regulatory part of it where they'd come in and they take a look at your bank and make a determination. As a matter of fact, they price the premiums on the FDIC insurance based upon what they perceive the quality of your bank to be. And so I suspect that anybody that's going to be willing to write this insurance may want to go as rather than just blanketly write the insurance for the premium may want to go a step further and determine the financial worthiness of the

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people that are being covered. [LR104]

SENATOR CARLSON: Okay. Senator Dubas. [LR104]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Mr. Dahlgren, for being here today. I think you brought up some very good points in your letter. And I think this whole issue is maybe way bigger than just whether we have or don't have a grain indemnity fund. We're talking about the contracts that producers enter into and really what do those contracts mean? Essentially what you just said--once we sign that contract, that grain is not ours anymore. If we don't raise that grain, we're still responsible for filling that contract. It doesn't necessarily work the other way that if the company goes out of business or is in bankruptcy we still have to deliver that to them with no promise of being paid. There are no companies out there right now that are saying that they would write a bond for anything more than the \$500,000. So if there's no business, it's hard to require. I think the point you brought out in your letter about if the Public Service Commission can't track the solvency of these elevators and these grain dealers, then how is it that we, as producers, are going to be able to track it? So I think there's a lot of moving parts to this whole discussion. And as I've been talking to producers and being a producer myself, I fully understand our business is a risk-based business. But it's very frustrating. I'm willing to take on my own risk, but it's frustrating if I'm being asked to take on other people's risk too with my profit margin being as narrow as it is. So I think it's very valuable that we're having this discussion today, but I think it goes much deeper than just whether we have an indemnity fund or not or how that indemnity fund is set up. I think we have a lot of questions that we need to be looking at in-depth. I had a lot of constituents who were hurt by the VeraSun bankruptcy. And yeah, they want some answers but, you know, not necessarily liking the answers that are being thrown out there right now. So thank you for your testimony. [LR104]

BOB DAHLGREN: Is this going to be like a three-year...are we going to take quite a bit of time studying this issue? [LR104]

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SENATOR CARLSON: I would think so, yes. [LR104]

BOB DAHLGREN: That would be good because like Senator Dubas said, this is lots of parts to it and lots of issues. [LR104]

SENATOR CARLSON: I don't have a burning desire that we have to get something done next month. Any other questions for Bob? Okay, thank you. Any other testifiers? No? [LR104]

J.D. SCHLUNTZ: Do you want me to testify, Tom? [LR104]

SENATOR CARLSON: Sure. [LR104]

J.D. SCHLUNTZ: I run an elevator but I don't have nothing to say. (Laughter) You can sure ask me questions. I don't have a sheet either. J.D. Schluntz, S-c-h-l-u-n-t-z. I run an elevator for, oh, 10 years. The dealings I had with Public Service Commission were okay. They have three ways they tried to, I don't know, keep you honest. They come out and inspected your grain which probably works pretty good. The bond was a burden. You talk about price of bonds, I had to give I think it was 30 cents a bushel. Bonding company would write me the bond. I think it was \$170,000, but I'm not sure of the numbers. If I would give them a certificate of deposit for \$170,000, they'd only charge me 1 percent. Well, it (inaudible) too good a deal, but we did find a bank that would give me a letter of credit if I would give them a certificate of deposit for \$170,000 so we got by that step. And then they had a CPA come out or I had to get a CPA to audit my books, which was money thrown away. But if I wanted to cheat, there was no problem there. I could get by anything with him. I think they'd have been better off if they'd have done one thing and done it well rather than having three things to kind of get you along. That's just my opinion. And on this insurance, it seems to me like if I want insurance so I get paid, isn't your insurance company want to know where are you going to sell it or

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they're going to have to police or check where you're going to sell it. Aren't they going to check them out and see if they're good? [LR104]

SENATOR CARLSON: I would hope so. [LR104]

J.D. SCHLUNTZ: Isn't that going to be a lot of burden on the insurance company? Are they going to be willing to do it? Are they going to have to get an insurance policy if I sell it to this elevator. Am I going to have to have another insurance policy if I sell it to here? If I sell it to a cattle feeder, is it going to be another insurance policy? [LR104]

SENATOR CARLSON: Those are all good questions. [LR104]

J.D. SCHLUNTZ: And I didn't have much to say, but if you guys want to talk to a guy that really run an elevator, here I am. (Laughter) And I told Public Service Commission when they come they had two choices: You can let me stay open or you can close me and run it yourself then. I don't care. (Laughter) [LR104]

SENATOR CARLSON: All right. Any questions for J.D.? Senator Wallman. [LR104]

SENATOR WALLMAN: Thank you, Senator Carlson. Yeah, I appreciate elevator operators. Do you have a lot of people have open storage in your elevator? [LR104]

J.D. SCHLUNTZ: I don't run the elevator no more but, yes, we did. Yes. [LR104]

SENATOR WALLMAN: Thank you. [LR104]

SENATOR CARLSON: Okay. Any other questions? All right. J.D., thank you for being available. [LR104]

J.D. SCHLUNTZ: You're welcome. [LR104]

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SENATOR CARLSON: Anybody else? Don. [LR104]

DON HOLEN: I'm Don Holen from Bertrand, Nebraska. [LR104]

SENATOR CARLSON: Spell it, Don. [LR104]

DON HOLEN: D-o-n H-o-l-e-n. We happen to own the elevator that gets a lot of comment down there at Atlanta, Nebraska. We use it for our own operations. But having been in the grain business nearly all my life since getting out of college, I do not have any answers because you're dealing with such large volumes of dollars. And to ride herd on that so you tell the insurance company you go out and audit them today and then you're going to haul it the next week and things change so fast in the grain business, especially if you're connected to the board for your protection. And the board can be very, very good for protection, but it can also bite you very fast. And especially when you get into large movement that it takes if you start dropping limits, limits in like beans, 70 cents, and all of a sudden you've got to margin it. Bob Dahlgren speaks of margin money and what have you. It just all of a sudden becomes an issue for your line, especially if you're doing volume. And so I'm not here with any answers. I didn't sign one of these to come up here because I really didn't have the solution. But it's a huge, huge risk factor. [LR104]

SENATOR CARLSON: Well, I'll say this for the benefit of the committee here. Don and I have known each other for a long, long time. And he's got a long history in buying and selling grain and being a grain producer and being a good marketer and some experience that we've had together. So he can certainly answer questions that you might have. [LR104]

DON HOLEN: It seems in the beginning years, my first ten years, I traded on the trading floor, did all the trading for a large firm and it almost becomes an integrity issue. You

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know, back then I can remember buying millions of bushels of grain and you just really...you just had a personal relationship. And I'm sure all of you know just what I'm talking about that it almost wasn't even a factor if you could trust what was there. But as years have gone by, things have changed. And it's a...and plus the farmers, the amount they're dealing with as far as volumes of grain and then especially the issue of going from maybe \$2, \$3 a bushel was the biggest, up to \$7 to \$12 to \$13, you know, what we've seen, there's huge, huge risk. And it...I guess I don't know the answer. That's why I didn't sign up to because I'd like to contribute something, but it's such a deep pocket thing that...and those that have the deep pockets you might think maybe don't have the deep pockets because of how ebb and flow even in a week or two of cattle feeding. I've been a cattle feeder and I've bought grain and it's just a risky but good business (laughter) if it's handled with integrity. [LR104]

SENATOR CARLSON: Senator Dierks. [LR104]

SENATOR DIERKS: Thank you, Senator Carlson. Don, welcome to the committee. What if we just abolish the Board of Trade? [LR104]

DON HOLEN: Well, let me tell you. The Board of Trade, I used to buy millions of bushels of grain and I couldn't wait to get it sold on the Board of Trade just to have that protection because the Board of Trade I will stick up for it all the way. It's amazing how the Board of Trade keeps going. But I'll guarantee you if you're in margin, you're going to have it or they're out. And that happens hourly. If you don't have your margin money in there and rightly so because if you can't back it, and that's what keeps it. It's amazing how the Board of Trade has existed and done pretty dang well in carrying risk. [LR104]

SENATOR DIERKS: Well, thanks for that. [LR104]

SENATOR CARLSON: Any other questions? [LR104]

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DON HOLEN: I can cuss them too but somebody has to carry the risk factor. [LR104]

SENATOR CARLSON: I've never heard you cuss in my life. Did you say you could cuss them too? [LR104]

DON HOLEN: Well, you know. (Laughter) [LR104]

SENATOR CARLSON: Any other questions of Don? Okay, thank you. Anyone else? Senator Schrock. []

ED SCHROCK: For the record, my name is Ed Schrock. It's spelled E-d S-c-h-r-o-c-k. Senator Carlson, as you know, I had the privilege of being the senator for this area when the Atlanta grain elevator went under and when the Damrow feedlot went under. And it put quite a damper on this county. I'm in the process of getting started harvesting now. I've already hauled wet corn to three different feedlots. Unfortunately, I mean fortunately I didn't get involved in either one of those operations, but it could have been. It was just luck of the draw probably. My concern is that I'll pick on the bankers a little bit here. We take the corn to the feedlot. It gets ground up and put in a wet pile. That's my corn. It's going to be fed to cattle that I buy and put in that feedlot. But if that elevator goes bankrupt and I don't have things properly documented and jump through some wiggle hoops, and most farmers don't, we depend on our bankers to tell us whether this feedlot is solvent or not. And they don't always get it right. But if that feedlot goes bankrupt, I become about the last one in line to get my money even though my physical product is there, if the corn is there, it's not mine anymore even though I've banked it there, just as sure as if you put some money in the bank here and have a safety deposit box or safety...a savings account that you can document, you'll get your money out of that because of your insurance with the FDIC. But I'm not going to get any money from that grain until all the rest of the creditors are satisfied. I'm pretty sure that's the way it happens. I can protect myself a little bit when I pay for that feedlot, when I pay for the cattle if I make sure the check is made out to two parties because then I know there's

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ownership there. When there's fraud, you can't protect yourself from anything because, of course, some cattle were sold...the same cattle were sold to more than one party. And that's a tough deal. This issue is huge. And when you try to solve the wet corn pile issue, I've took that to the Legislature, the Banking Committee, and you can't fight the banking lobby on that one. You'll lose every time. Other than that, I have nothing else to offer but it's a lot of dollars involved. I could give you an update on wind projects if you're interested in that. That's a political football too. [LR104]

SENATOR CARLSON: Well, let's stick with this today. We're following the guidelines and the rules. [LR104]

ED SCHROCK: I've been there. I know that. [LR104]

SENATOR CARLSON: So you're saying that you really understand and realize it is a problem. But the answer is just very, very difficult, if there is an answer. [LR104]

ED SCHROCK: And all I can hope is when I haul that corn to the feedlot, I know that's not the issue today, it's the issue is the warehouses, our hope is that the banker has got a handle on things and knows that feedlot is solvent. There's been a lot of money lost on cattle the last couple of years. Some of them are struggling so. [LR104]

SENATOR CARLSON: All right. Any questions of Senator Schrock? Okay. Senator Dierks, go at him. [LR104]

ED SCHROCK: Go easy on me. [LR104]

SENATOR DIERKS: Senator Schrock, we stated working on this before Damrow, you remember? And we just keep getting beat. It's frustrating. But, well, you just keep plugging away. You keep getting those corn rows picked. So how do you handle that wet corn? Do you dry it a little bit first before you take it over there? [LR104]

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ED SCHROCK: No, no. It's ground up and put in a pile and packed like ensilage.
[LR104]

SENATOR DIERKS: Oh, it's silage. Oh, I see. [LR104]

ED SCHROCK: That's very common practice in this part of the state. [LR104]

SENATOR DIERKS: Well, we're doing a lot of that in our country too. Have you got some mature corn? [LR104]

ED SCHROCK: Yes. [LR104]

SENATOR DIERKS: Most of the guys in my country say they need a couple more weeks of warm weather. [LR104]

ED SCHROCK: No, we've been...the corn we've been picking has been running between 26 and 33. [LR104]

SENATOR DIERKS: Good. It's good to see you again, Ed. Take care. [LR104]

ED SCHROCK: It's nice to see somebody else deal with the problems I can tell you that.
[LR104]

SENATOR DIERKS: Thank you. [LR104]

SENATOR CARLSON: Senator Utter. [LR104]

SENATOR UTTER: Thank you, Senator Carlson. Senator Schrock, as you may know, I came from the banking business. And just a couple of observations. And it's always

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seemed very strange to me that folks, farmers and other folks would come to the bank and they know what they've got in the bank, how many dollars it is, and they're really very particular about going above the FDIC limit. They want to be sure their deposit is covered by the FDIC limit. And I think that's prudent. And yet those same folks will haul a half a million dollars of grain to an elevator, to a feedlot, to a ethanol plant without a clue as to what the financial stability of that facility is and agree to take their money in 90 days or after the first of the year (inaudible). I've really been perplexed about the different thinking that happens there. And I don't know how you satisfy yourself as to the financial condition of a feedlot or an ethanol plant or a grain elevator. Some satisfaction probably could be gained if you actually looked at the financial statement. But coming to the bank and say, you know, what do you think about Joe Blow? Well, unless Joe Blow is a customer of mine, I don't have a clue as a banker as to what the real financial stability of that person is. [LR104]

ED SCHROCK: And correct me if I'm... [LR104]

SENATOR UTTER: And if I did, I couldn't tell you... [LR104]

ED SCHROCK: You couldn't tell me, that's correct. [LR104]

SENATOR UTTER: ...because of the privacy laws. [LR104]

ED SCHROCK: There's something...yeah, you can't. I run into that. My banker can't tell me. Even if he knew, he couldn't tell me. [LR104]

SENATOR UTTER: So it makes it a...one of the culprits, frankly, is the delayed pricing things that we can do in agriculture. And I think we just got to recognize that there's a real element of risk there that every bushel of corn you haul out to that feedyard or to that elevator or to that ethanol plant is at risk until the check has been deposited and cleared the elevator operator or the feedlot operator or the ethanol plant's bank. [LR104]

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ED SCHROCK: Well, I had the privilege of dealing with Bob Dahlgren on this and I think he was frustrated, probably frustrated with me, but everywhere we went we ended up on a dead-end street. And I don't know if Bob would agree with that or not, but just couldn't get anywhere. So I'm not sure you've got an answer here. [LR104]

SENATOR UTTER: I agree with that. Thank you. [LR104]

ED SCHROCK: And we'll just have to be prudent who we do business with and hope and have a little faith. [LR104]

SENATOR UTTER: Well, I think you need to try to evaluate the risk as best you can and then you've got to ask yourself would it be better I go ahead and pay the tax on this thing and get my money and know that I've got it or is it worth the risk to wait 60 or 90 days before that... [LR104]

ED SCHROCK: But in the case of a feedlot where I still own that grain, supposedly own it, some of that won't get fed until next July and August. And I can imagine... [LR104]

SENATOR UTTER: And you're doing that without a warehouse receipt of any kind in most cases. [LR104]

ED SCHROCK: Yes, very common practice out here. And I know your issue today wasn't feedlots so I'm off base there. [LR104]

SENATOR CARLSON: It's all right. And, of course, you realize the risk when you're taking the corn wherever you're taking it so you're not blind in that regard. Any other questions of Senator Schrock? All right, thank you for coming forward. Anyone else want to... [LR104]

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ED SCHROCK: By the way, Tom, this is...generally speaking, this county leads the state in yield per acre. We're one of the top 5 (inaudible) counties in the state and we're the third largest cattle feeding county in the state so, behind Dawson and Cuming County. So it's a very important agricultural county in Nebraska. [LR104]

SENATOR CARLSON: Sure is. Well, thank you for coming. And with that, we close the hearing on LR104. [LR104]